

VOLUME I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1959

No. 74

AMERICAN TRUCKING ASSOCIATIONS, INC.,
ET AL., APPELLANTS,

vs.

UNITED STATES OF AMERICA, INTERSTATE
COMMERCE COMMISSION, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED MAY 22, 1959

PROBABLE JURISDICTION NOTED OCTOBER 12, 1959

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1959

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[fol. 1] [File endorsement omitted]

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

Civil Action No. 2534-'58

AMERICAN TRUCKING ASSOCIATIONS, INC., THE CONTRACT CARRIER CONFERENCE OF AMERICAN TRUCKING ASSOCIATIONS, INC., 1424 Sixteenth Street, N. W., Washington 6, D. C.; NATIONAL AUTOMOBILE TRANSPORTERS ASSOCIATION, 1000 Connecticut Ave., N. W., Washington 6, D. C.; CONVOY COMPANY, Box 348, San Jose, Calif.; ROBERTSON TRUCK-A-WAYS, INC., 7101 East Slauson Ave., Los Angeles 22, Calif.; HADLEY AUTO TRANSPORT, 21732 South Santa Fe Ave., Long Beach, Calif.; B & H TRUCKAWAY, 5127 Maywood Ave., Maywood, Calif.; WESTERN AUTO TRANSPORTS, INC., 430 South Navajo Street, Denver 23, Colorado; and KENOSHA AUTO TRANSPORT CORP., Box 351, Kenosha, Wis., Plaintiffs,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Washington 25, D. C., Defendants.

COMPLAINT TO SET ASIDE ORDER OF INTERSTATE COMMERCE COMMISSION—Filed October 7, 1958

Come now American Trucking Associations, Inc., the Contract Carrier Conference of American Trucking Associations, Inc., National Automobile Transporters Association, Convoy Company, Robertson Truck-A-Ways, Inc., Hadley Auto Transport, B & H Truckaway, Western Auto Transports, Inc., and Kenosha Auto Transport Corp., and for their cause of action state:

I

Jurisdiction

This is an action to suspend, enjoin, annul and set aside a report and order of the defendant, Interstate Commerce

Commission, and arises under the provisions of Section 205(g) of the Interstate Commerce Act, 49 U.S.C. §305(g), Section 10 of the Administrative Procedure Act, 5 U.S.C. §1009, and Sections 1336, 1398, 2284, and 2321 to 2325 of the Judicial Code, 28 U.S.C. §§1336, 1398, 2284 and 2321 to 2325. The United States of America is named as a defendant pursuant to Section 2322 of the Judicial Code, 28 U.S.C. §2322.

[fol. 2]

II

Parties

American Trucking Associations, Inc., is the national organization of the trucking industry, representing all types of motor carriers of property. Organized and existing as a non-profit corporation under the laws of the District of Columbia, it maintains offices at 1424 Sixteenth Street, N. W., Washington 6, D. C.

The Contract Carrier Conference of American Trucking Associations, Inc., is an incorporated association of motor contract carriers engaged in interstate transportation under permits issued by the Interstate Commerce Commission. The Conference maintains offices at 1424 Sixteenth Street, N. W., Washington 6, D. C.

National Automobile Transporters Association is a non-profit organization including in its membership substantially all motor common carriers engaged in the transportation of automobiles and related commodities throughout the United States. The Association maintains offices at 1000 Connecticut Ave., N. W., Washington 6, D. C.

Convoy Company, San Jose, California, is a common carrier by motor vehicle engaged in the transportation of automobiles and related commodities in interstate commerce pursuant to authority granted by the defendant, Interstate Commerce Commission.

Robertson Truck-A-Ways, Los Angeles, California, is a common carrier by motor vehicle engaged in the transportation of automobiles and related commodities in interstate commerce pursuant to authority granted by the defendant, Interstate Commerce Commission.

Hadley Auto Transport, Long Beach, California, is a contract carrier by motor vehicle engaged in the transportation of automobiles and related commodities in interstate commerce pursuant to authority granted by the defendant, Interstate Commerce Commission.

[fol. 3] B & H Truckaway, Maywood, California, is a common carrier by motor vehicle engaged in the transportation of automobiles and related commodities in interstate commerce pursuant to authority granted by the defendant, Interstate Commerce Commission.

Western Auto Transports, Inc., Denver, Colorado, is a common carrier by motor vehicle engaged in the transportation of automobiles and related commodities in interstate commerce pursuant to authority granted by the defendant, Interstate Commerce Commission.

Kenosha Auto Transport Corp., Kenosha, Wisconsin, is a common carrier by motor vehicle engaged in the transportation of automobiles and related commodities in interstate commerce pursuant to authority granted by the defendant, Interstate Commerce Commission.

III

Statement

By application filed under Section 209 of the Interstate Commerce Act, 49 U.S.C. §309, Pacific Motor Trucking Company, the wholly-owned motor-carrier subsidiary of the Southern Pacific Company, a common carrier by railroad, hereinafter called the Railroad, sought authority from the defendant, Interstate Commerce Commission, to engage in unrestricted trucking operations, as a motor contract carrier of new automobiles, trucks and buses, from General Motors plants at Oakland, South Gate and Raymer, California, to points in the States of Arizona, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, and Washington. The application was docketed as MC-78787 (Sub-No. 37), and hearings on the application were held on February 20, 21, 25, and 26, 1957, at San Francisco, California.

By similar applications, Pacific Motor Trucking Co. had previously sought other unrestricted authority (1) from

Oakland, California, to points in Oregon which are stations on the rail lines of its parent railroad; (2) from Oakland, Calif., to Austin, Tonopah, and Yerington, Nev.; and (3) from Raymer (Los Angeles), Calif., to points in Arizona which are stations on the rail lines of its parent railroad. [fol. 4] These applications were docketed as MC-78787 (Sub-Nos. 34, 35, and 36), respectively. After the issuance of recommended reports in the four cases, the defendant Interstate Commerce Commission by order of August 16, 1957, consolidated the proceedings in No. MC-78787 (Sub-Nos. 34, 35, 36, and 37) for disposition in one report. Oral argument was had before the Commission on December 4, 1957.

On September 17, 1958, the Commission issued its report and order dated September 9, 1958 (Appendix A), complained of herein.* In substance, the report and order authorizes the Railroad, through its wholly-owned subsidiary, Pacific Motor Trucking Company, to transport automobiles and trucks in unrestricted trucking operations from General Motors plants at Oakland, South Gate and Raymer, California, to points in the States of Arizona, Nevada, New Mexico, Oregon and Utah. Plaintiffs have exhausted their administrative remedy before the Interstate Commerce Commission, and the permit authorized by the report and order complained of will be issued by the Commission unless the said report and order is suspended, enjoined, annulled and set aside and the issue of the permit enjoined by this Court.

IV

Allegations of Error

The defendant Interstate Commerce Commission, in making and issuing the report and order complained of exceeded its powers and authority delegated under law and erred in the following particulars:

* A corrected Sheet 31, included herewith as part of Appendix A, was issued September 22, 1958.

(a) The finding that the unrestricted operations which Pacific Motor Trucking Company is authorized to perform as a contract carrier by motor vehicle, as more fully described in the report, will be consistent with the public interest and the national transportation policy, is unsupported by and contrary to the evidence of record and is contrary to the law, to wit, the National Transportation Policy and Sections 5(2)(b), 209, and 210 of the Interstate Commerce Act, 49 U.S.C. preceding §1, §5(2)(b), §309, and §310, in that:

[fol. 5] (1) The evidence before the Commission and the report complained of, clearly show that there is a great amount of existing authorized motor carrier service available to transport the traffic involved;

(2) The report and order arbitrarily and unlawfully protects rail protestants against invasion and competition, but fails to extend similar protection to independent motor carrier protestants;

(b) The report and order of the Commission fails to give effect to the Congressional policy against common ownership and control of competing transportation media, in that it permits the Railroad to own and operate a motor carrier performing substantial operations completely divorced from those of the railroad, without evidence of record to support a finding that special circumstances justify an exception to the Congressional policy;

(c) The report and order of the Commission fails to give effect to the provisions of Section 210 of the Interstate Commerce Act, 49 U.S.C. §310, respecting dual operations, designed and intended to preclude the authorization, under common ownership and control, of both common and contract operations under circumstances affording an opportunity for undue preference and unjust discrimination;

(d) The report and order of the Commission fails to recognize and preserve the inherent advantages of motor carrier transportation, hinders the establishment of sound competitive conditions and promotes monopoly in trans-

portation contrary to the provisions of the National Transportation Policy, in that it confers an absolute monopoly upon the Railroad and its motor subsidiary between Oakland, South Gate and Raymer, California, and the destination states involved, in the transportation of automobile traffic involving tens of thousands of vehicles annually;

(e) For the reasons set forth, the report and order complained of is not in accordance with law or with the evidence, is unreasonable, arbitrary, capricious, and constitutes an abuse of discretion.

[fol. 6]

V.

Prayer for Relief

Wherefore, plaintiffs respectfully pray:

(a) That in accordance with Rule 4 of the Federal Rules of Civil Procedure this Court order process to issue against the defendants, Interstate Commerce Commission and the United States of America;

(b) That in accordance with Section 2284(1) of Title 28 of the United States Code this Court immediately notify the Chief Judge of the United States Court of Appeals for the District of Columbia Circuit who shall designate two other judges, at least one of whom shall be a Circuit Judge, to serve as members of the Court to hear and determine this action;

(c) That in accordance with Section 2284(3) of Title 28 of the United States Code this Court issue a temporary restraining order, to remain in force until the hearing and determination of the full Court, to prevent the defendant Interstate Commerce Commission from issuing a permit to Pacific Motor Trucking Company allowing institution of the operations authorized by the report and order complained of;

(d) That in accordance with Section 2324 of Title 28 of the United States Code and Section 10 of the Admin-

Administrative Procedure Act, 5 U. S. C. §1009, the full court, after hearing, enjoin the defendant Interstate Commerce Commission from issuing a permit to Pacific Motor Trucking Company allowing institution of the operations authorized by the report and order complained of, pending final hearing and determination of this action;

(e) That upon final hearing of this action judgment be entered to permanently suspend, enjoin, annul, and set aside the report and order of the defendant Interstate Commerce Commission, complained of herein, and that the Court remand this matter to the Commission for further proceedings consistent with the Court's opinion;

[fol. 7] (f) That the Court grant such further relief as it deems just and proper.

Respectfully submitted,

American Trucking Associations, Inc. and its Contract Carrier Conference;

Peter T. Beardsley, 1424 Sixteenth Street, N. W., Washington 6, D. C.;

Charles W. Singer, 1825 Jefferson Place, N. W., Washington, D. C.,

Attorneys.

National Automobile Transporters Association; Convoy Company; Robertson Truck-A-Ways, Inc.; Hadley Auto Transport; B & H Truckaway; Western Auto Transports, Inc.; Kenosha Auto Transport Corp.;

Walter N. Biehman, 2150 Guardian Building, Detroit 26, Michigan;

Larry A. Eskilsen, 1111 E Street, N. W., Washington 4, D. C.,

Attorneys.

INTERSTATE COMMERCE COMMISSION

No. MC-78787 (Sub-No. 34)¹

PACIFIC MOTOR TRUCKING COMPANY EXTENSION—OREGON

Decided September 9, 1958.

1. Upon reconsideration, in No. MC-78787 (Sub-No. 34), findings in prior report, 71 M.C.C. 561, affirmed. Operation by applicant as a contract carrier by motor vehicle of automobiles and trucks, except trailers, in initial movements, in truckaway service, from a specified plant site in Oakland, Calif., to named points in Oregon, over irregular routes, found consistent with the public interest and the national transportation policy.
2. In No. MC-78787 (Sub-No. 35), operation by applicant as a contract carrier by motor vehicle of automobiles, and trucks, except trailers, in initial movements, in truckaway and driveaway service, from a specified plant site in Oakland, Calif., to Austin, Tonapah, and Yerington, Nev., over irregular routes, found consistent with the public interest and the national transportation policy.
3. In No. MC-78787 (Sub-No. 36), operation by applicant as a contract carrier by motor vehicle, of automobiles and trucks, except trailers, in initial movements, in truckaway and driveaway service, from a specified

¹ This report also embraces No. MC-78787 (Sub-No. 35), Pacific Motor Trucking Company Extension—New Motor Vehicles to Additional Nevada Points, No. MC-78787 (Sub-No. 36), Pacific Motor Trucking Company Extension—New Motor Vehicles, Raymer, Calif., to Arizona, and No. MC-78787 (Sub-No. 37), Pacific Motor Trucking Company Extension—Automobiles—California Assembly Plants to 7 Western States.

plant site in Raymer, Calif., to named points in Arizona, found consistent with the public interest and the national transportation policy.

4. In No. MC-78787 (Sub-No. 37), operation by applicant as a contract carrier by motor vehicle, in initial movements, in truckaway and driveaway service, (1) of automobiles and trucks, except trailers, (a) from a
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[fol. 9] specified plant site in Oakland, Calif., to named points in Arizona, New Mexico, and Utah and (b) from a specified plant site in Raymer, Calif., to named points in Nevada, New Mexico, Oregon, and Utah, and (2) of automobiles, in truckaway and driveaway service, from a specified plant site in South Gate, Calif., to named points in Arizona, Nevada, Oregon, and Utah, found consistent with the public interest and the national transportation policy.
5. Holding by applicant of the permits authorized herein and of certificates heretofore issued, found consistent with the public interest and the national transportation policy.
6. Issuance of the permits authorized herein approved upon compliance by applicant with certain conditions, and applications in all other respects denied.

William Meinhold, Stanfield Johnson, Thormund M. Miller, Robert L. Pierce, and Edward M. Reidy for applicant.

Walter R. Frizzell for intervenor in support of the application Nos. MC-78787 (Sub-Nos. 35, 36, and 37).

Henry L. Hogan for same intervenor in No. MC-78787 (Sub-Nos. 36 and 37).

Phil Jacobson, Peter T. Beardsley, Fritz R. Kahn, G. G. Andersen, R. W. Cronon, John J. Burchell, Frank S. Farrell, Clair G. Anderson, Louis E. Smith, Marvin Handler, Walter N. Bienaman, Clarence D. Todd, Charles W. Singer, Joseph E. Earp, and Charles B. Myers for protestants and intervenors in opposition.

John G. Lyons for intervenor in opposition in No. MC-78787 (Sub-No. 34), and as its interests might appear in No. MC-78787 (Sub-Nos. 35, 36, and 37).

Reginald L. Vaughn for intervenor as its interest might appear in No. MC-78787 (Sub-No. 37).

REPORT OF THE COMMISSION ON ORAL ARGUMENT²

By the Commission:

These four related applications were orally argued on a consolidated record and will be disposed of here in one report. The Sub 35 and 36 applications were heard on a consolidated record and the Sub 34 and 37 applications on separate records. The title proceeding has been the subject of a prior report on oral argument, 71 M.C.C. 561.

No exceptions were filed to the examiner's recommended order in the Sub 35 proceeding but it was stayed by us. The Sub 36 and 37 applications have been the subject of

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[fol. 10] recommended reports, to which exceptions and replies have been filed. General Motors Corporation, hereinafter called General Motors, supports, and American Trucking Associations, Inc., and Contract Carrier Conference of American Trucking Associations, Inc., hereinafter called ATA and the Conference, respectively, oppose the applications. Our conclusions differ slightly from those recommended in each proceeding. Exceptions, contentions, and requested findings not discussed in this report nor reflected in our findings or conclusions have been considered and found not justified.

By the title application filed October 14, 1955, as amended, Pacific Motor Trucking Company, a corporation, of San Francisco, Calif., seeks a permit authorizing operation, in interstate or foreign commerce, as a contract carrier by motor vehicle of new Chevrolet automobiles, new Chevrolet trucks, and new Chevrolet buses, in initial movements, in truckaway service, from the sites of Chevrolet Plants Nos. 1 and 2 in Oakland, Calif., to points in Oregon which are stations on the lines of the Southern Pacific Company, hereinafter called Southern Pacific, over irregular routes.

In the Sub 35 application filed March 5, 1956, as amended, the same applicant seeks a permit authorizing

² On reconsideration and oral argument in the title proceeding.

operation, in interstate or foreign commerce, as a contract carrier by motor vehicle of new automobiles, new trucks, and new buses, except trailers, in initial movements, in truckaway and driveaway service, from Oakland, Calif., to Austin, Tonapah, and Yerington, Nev., over irregular routes. Dallas & Mavis Forwarding Co., Inc., opposed this application at the hearing.

By its Sub 36 application filed March 9, 1956, as amended, the same applicant seeks a permit authorizing operation, in interstate or foreign commerce, as a contract carrier

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[fol. 11] by motor vehicle of new automobiles, new trucks, and new buses, except trailers, in initial movements, in truckaway and driveaway service, from Raymer, Calif., to points in Arizona which are stations on the rail lines of Southern Pacific, over irregular routes. Robertson Truck-A-Ways, Inc., a motor common carrier, and two motor contract carriers, B & H Truckway and Hadley Auto Transport, hereinafter called Robertson, B & H, and Hadley, respectively, oppose this application.

In the Sub 37 application filed October 23, 1956, the same applicant seeks a permit authorizing operation, in interstate or foreign commerce, as a contract carrier by motor vehicle (1) of new automobiles, new trucks, and new buses, except trailers, in initial movements, in truckaway and driveaway service, (a) from the sites of the General Motors Chevrolet plants at Oakland, Calif., to points in Arizona, Idaho, Nevada, New Mexico, Oregon, Utah, and Washington, except points in Oregon and Nevada which are stations on the rail lines of Southern Pacific, and except Carson City, Minden, Austin, Tonapah, and Yerington, Nev., and (b) from the site of the General Motors Chevrolet Plant at Raymer, Calif., to points in Arizona, Idaho, Nevada, New Mexico, Oregon, Utah, and Washington, except points in Arizona which are stations on the rail lines of Southern Pacific; and (2) new automobiles, except trailers, in initial movements, in truckaway and driveaway service, from the site of the General Motors Buick-Oldsmobile-Pontiac Plant at South Gate, Calif., to points in Arizona, Idaho, Montana, Nevada, Oregon, Utah, and Washington, over irregular routes. Nine carriers by railroad, nine motor carriers, and National

Automobile Transporters Association, hereinafter called NATA, oppose the application. Insured Transporters, Inc., intervened as its interest might appear in all proceedings.

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[fol. 12] Preliminary Discussion

Sub-No. 34. In the prior report in the Sub-34 application we found that applicant should be granted a permit authorizing the transportation of automobiles and trucks, in initial movements, in truckaway service, from the site of General Motors Corporation's Plant No. 1 at Oakland, Calif., to points in Oregon which are stations on the lines of the Southern Pacific, over irregular routes; and that the holding by applicant of such permit and those heretofore issued to it, and of certificates heretofore issued to it authorizing motor common carrier operations in the same territory, would be consistent with the public interest and the national transportation policy. Thereafter, upon petitions of ATA and the Conference, to which applicant replied, we reopened this proceeding for reconsideration on the present record solely with respect to whether the motor-contract carrier authority granted therein should be made subject to the substituted-service restrictions usually imposed in certificates issued to rail carriers or motor affiliates of rail carriers. Subsequently this proceeding and the three other applications covered by this report were the subject of oral argument.

In their petitions in the Sub 34 proceeding and on oral argument, ATA and the Conference contend (1) that the policy laid down by the Congress of restricting the motor carrier operations of rail carriers or their subsidiaries to service which is auxiliary to and supplemental of rail service, as indicated in section 5(2)(b) of the Interstate Commerce Act, consistently has been recognized by the Commission as being applicable to applications for common carrier authority filed under section 207, and should be recognized as being equally applicable to requests for contract carrier authority filed under section 209; and (2) that

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[fol. 13] the Commission is without statutory sanction to allow railroads or their affiliates to perform unrestricted

motor contract carrier service, i.e., service which is not auxiliary to or supplemental of train service, whether the authority to perform such service is obtained through the medium of purchase under section 5(2)(b) or as the result of an application filed under section 209. In reply applicant maintains that all issues arising under section 209 have been determined in the administrative consideration of the Sub 34 application, and that approval of unrestricted authority would be in conformity with prior decisions³ of the Commission granting it similar authority.

Sub-Nos. 35 and 36. The examiner recommended that the Sub 35 application be granted, but restricted the origins to be served to the sites of the General Motors Chevrolet Plant in Oakland. No exceptions were filed to the order recommended by the examiner, but it was stayed by division 1, in order to give consideration to the question of dual operations.

The joint board recommended that the Sub 36 application be granted, but with service at origin restricted to the plant site of the General Motors Chevrolet plant at Raymer. On exceptions, the opposing motor carriers urge that the board erred (1) in failing to find that there are existing carriers authorized and equipped to render the proposed service.

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[fol.14]. (2) in recommending that applicant be granted authority to serve only those Arizona consignees at rail points, thereby discriminating against consignees at other points, (3) in recommending that driveaway service be authorized because no need therefor has been shown, (4) in finding that existing carriers would not be prejudiced by the recommended grant of authority, (5) in concluding that a grant of the application is justified since a denial would result in the continued movement of the traffic by Southern Pacific, and (6) in predicated such grant upon the fact that Southern Pacific maintains shipping facilities adjacent

³*Pacific Motor Trucking Co., Extension of Operations—Automobiles*, 42 M.C.C. 911 (1943); *Pacific Motor Trucking Co., Extension—New Automobiles, Trucks, and Busses, Los Angeles to San Ysidro and Calexico*, 51 M.C.C. 860 (1950); *Pacific Motor Trucking Co., Extension—Raymer to Los Angeles Harbor*, 51 M.C.C. 861 (1950); and *Pacific Motor Trucking Co., Extension—Carson City and Minden, Nev.*, 63 M.C.C. 851 (1955).

to the plant site. In a joint reply applicant and General Motors aver that the evidence supports the board's recommendation and urge that it be approved.

Sub-No. 37. In the Sub 37 application the examiner recommended a grant of contract-carrier authority to transport (1) automobiles, trucks, and buses, except trailers, in initial movements, in truckaway and driveaway service, (a) from the site of the General Motors Chevrolet Plant No. 1 at Oakland to points in Arizona, New Mexico, and Utah, and (b) from the site of the General Motors Chevrolet Plant at Raymer to points in Nevada, New Mexico, Oregon, and Utah, and (2) automobiles, in initial movements, in truckaway and driveaway service, from the site of the General Motors' Buick-Oldsmobile-Pontiac Plant at South Gate to points in Arizona, Nevada, Oregon, and Utah, over irregular routes, with service restricted in each instance to points which are stations of the rail lines of Southern Pacific.

Applicant and General Motors filed exceptions to the recommended partial denial of this application, and the opposing rail carriers separately, and Convoy Company, Western Auto Transports, Inc., and Kenosha Auto Transport Corporation, hereinafter called, respectively, Convoy,

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[Vol. 15] Western, and Kenosha, jointly replied. The contentions advanced by these parties on oral argument are for all practical purposes the same as those set forth in the last-mentioned exceptions and replies. Applicant asserts that the examiner erred in denying authority to points which are off the rail lines of Southern Pacific and in failing to grant authority to all points covered by this application. Specifically, it argues (1) that the traffic involved accounts for only an insignificant fraction of the total operating revenues of the rail carriers connecting with Southern Pacific, (2) that there is nothing of record to indicate that a grant of the authority sought would seriously impair the operations of any of the rail protestants, (3) that applicant's past operations under contract for General Motors have been conducted at rates which provided a substantial margin of profit, (4) that there is no basis for the examiner's assumption that if unrestricted authority were

granted, Southern Pacific would be in a position to deprive its rail connections of participation in the traffic by manipulating the rates of its motor contract-carrier subsidiary, (5) that the examiner's findings fail to give adequate recognition to shipper's need for the proposed service to points not on the rail lines of Southern Pacific, (6) that the restriction against such service is arbitrary and unrealistic in that there is a manifestly greater need for truck transportation to such points than to those served by Southern Pacific, and (7) that a denial of the application to the extent recommended by the examiner would subject both it and Southern Pacific to irreparable damage inasmuch as the shipper has indicated that it will institute proprietary operations or support the application of another motor contract carrier, with no rail affiliation, if the recommended findings are

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[fol. 16] affirmed. General Motors challenges the imposition of the aforementioned restriction and the denial of authority to serve points in Idaho, Montana, and Washington, arguing that 80 percent or more of its dealers are located at points off the rail lines of Southern Pacific.

In reply the opposing rail carriers maintain that all of applicant's present contract-carrier authority is restricted to Southern Pacific points, except that to Carson City and Minden, Nev., which are not on the line of any railroad; that the application represents an attempt by Southern Pacific, through its motor subsidiary, to invade the territory of other railroads; that existing rail service cannot be deemed inadequate in face of shipper's continued use of such service to points in California and Oregon which applicant can presently serve; that a substantial volume of traffic would be diverted from the rail connections of Southern Pacific to applicant if the restriction is lifted; and that an undesirable situation would be created whereby Southern Pacific could through its subsidiary give a rate preference to General Motors on outbound shipments of finished automotive vehicles from its three California assembly plants, while at the same time applying the published common carrier rail rates on shipments handled as a rail carrier for other automobile manufacturers. Western, Convoy, and Kenosha in a joint reply say that the application should be denied in its entirety, generally for the reasons advanced

in the exceptions filed by Convoy and other opposing parties, which are summarized below.

Exceptions to the recommended partial grant of authority were separately filed by Convoy, ATA, the Conference, and NATA, and jointly by Robertson, Hadley, and B & H. The joint exceptants advance substantially the same arguments as were made by them in the Sub 36 proceeding.

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[fol. 17] The other exceptants collectively contend (1) that existing motor carrier services have not been shown to be inadequate, (2) that the supporting shipper herein should not be permitted, through the expression of a mere preference, to obtain an additional carrier without regard to the adequacy of existing transportation facilities, (3) that the recommended findings are discriminatory, protecting the interests of the connecting rail lines, but authorizing a new and competing operation into a territory already served by a large number of regulated motor carriers, (4) that the examiner failed to give effect to the statutory prohibition contained in the proviso of section 5(2)(b) against unrestricted truck operations by railroads or their affiliates, (5) that the proposed dual operations by applicant and its parent railroad presents the opportunity for unfair competitive practices in violation of section 210, and (6) that the granting of the application will enable Southern Pacific and applicant to maintain a virtual monopoly in the transportation performed by them for General Motors to and from its three California assembly plants. The Conference argues that the application should be either denied in its entirety or restricted in such manner as to make the proposed service auxiliary to or supplemental of the rail service of Southern Pacific. NATA takes the position (1) that motor contract carrier subsidiary of a railroad should not be permitted to extend its operations except upon a specific showing that no other transportation service is available to the shipper, and (2) that approval of the application will be followed by unlawful, discriminatory and destructive rate and pricing practices among competing transporters and automobile manufacturers in the involved territory, contrary to the public interest and national transportation policy.

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[fol. 18] In reply applicant contends (1) that because of the proximity of its receiving facilities and the integration of its service with shipper's operations, it is the only carrier that can adequately meet shipper's requirements for additional truck service, (2) that the opposing motor carriers are unable, either individually or collectively, to furnish the complete service desired; (3) that section 209 contains no specific provision requiring the imposition of unusual restrictions in permits issued to motor carrier subsidiaries of railroads, (4) that contract carriage by its very nature cannot be auxiliary to, or supplemental of rail service, and (5) that the grants of contract carrier authority in *Scott Bros., Inc., Extension of Operation—Jersey City*, 34 M.C.C. 163, to a motor subsidiary of the Pennsylvania Railroad and to itself in prior application proceedings without any restriction based upon rail ownership are controlling on the issue herein. Applicant further contends that the proposed dual operations are consistent with the public interest and the national transportation policy; that at no time has any person, shipper, or carrier charged it with any of the practices impliedly interdicted by section 210; that the situation which would result from a grant of authority here is no different from that prevailing in California and Oregon at the time its previous dual operations were approved; and that it is willing to have its outstanding certificates restricted so as to exclude the right to transport assembled automobiles, trucks, and buses. General Motors in its reply asserts that protestants' allegations of error in the examiner's reports are without support in the record.

The evidence adduced in the Sub Nos. 35, 36, and 37 proceedings, the examiner's or board's recommendations there-

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[fol. 19] in, and the exceptions and the replies thereto in the Sub-Nos. 36 and 37 proceedings have been considered. We find the examiner's or board's statement of facts in each proceeding, as corrected and supplemented below, to be adequate so far as necessary to a determination of the issues presented and adopt them as our own. Such facts and those set forth in the prior report in the title proceeding will be restated herein only to the extent necessary for a clear understanding of the issues presented.

Present and Proposed Operations of Applicant

Applicant, a wholly-owned subsidiary of Southern Pacific Company, a common carrier by railroad, presently holds various certificates issued by this Commission authorizing the transportation as a common carrier of general commodities, with certain exceptions, between points in California, Oregon, Nevada, Arizona, New Mexico, and Texas, generally over regular routes paralleling generally the rail lines of Southern Pacific. This common-carrier authority, except between certain origins and destinations in Oregon and California, is, with minor exceptions, restricted to service which is auxiliary to or supplemental of the rail service of its proprietary railroad. Applicant also holds permits authorizing operations as a contract-carrier by motor vehicle of new automobiles, new trucks, and new buses, in initial movements, in driveway and truckaway service, (1) from Oakland to Hawthorne, Carson City, and Minden, Nev., and points in Nevada which are stations on the rail lines of Southern Pacific, (2) from Raymer, Calif., to points in the Los Angeles Harbor commercial zone, and (3) between Los Angeles and Calexico and San Ysidro, Calif. All of its present contract carrier operations are performed for General Motors from assembly plants at Oakland, South Gate, and Raymer, Calif., in equipment especially designed for that purpose and dedicated to shipper's exclusive use.

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[fol. 20] On January 3, 1958, division 1 found that applicant's operations, as of that time, were in conformance with the definition of a contract carrier in section 203(a)(15), as amended August 22, 1957, and which reads:

The term "contract carrier by motor vehicle" means any person which engages in transportation by motor vehicle of passengers or property in interstate or foreign commerce, for compensation (other than transportation referred to in paragraph (14) and the exception therein), under continuing contracts with one person or a limited number of persons either (a) for the furnishing of transportation services through the assignment of motor vehicles for a continuing period of time to the exclusive use of each person served or

(b) for the furnishing of transportation services designed to meet the distinct need of each individual customer.

Applicant proposes to render a service only for General Motors, the only shipper it presently serves, and to assign its equipment to the exclusive use of that shipper. Clearly its proposed service will be that of a contract carrier. In accordance with section 209(b), as amended, any authority granted to applicant in these proceedings will be limited to service for General Motors. Upon a review of all of the evidence of record, we conclude that subject to a discussion hereinafter of the dual operations issue under section 210 and certain other matters, a need has been established by the supporting shipper in the Sub 34 and Sub 35 proceedings for the transportation of automobiles and trucks, in initial movements, from the site of General Motors' Plant No. 1 at Oakland (1) in truckaway service to points in Oregon which are stations in the lines of the Southern Pacific; and (2) in truckaway and driveaway service to Austin, Tonapah, and Yerington. No need has been shown for the proposed transportation of buses.

In the Sub 36 application, applicant proposes to transport new automobiles and trucks from the General Motors Chev-

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[fol. 21] rolet plant at Raymer to dealers located at points in Arizona which are stations on the lines of the Southern Pacific. General Motors has used applicant's service exclusively for the motor transportation of its vehicles to various points in California and Nevada. It has shipped automobiles and trucks to the considered Arizona points principally by rail via Southern Pacific, but desires the proposed service in order to effect faster as well as more direct deliveries to its dealers. It also expects to have some need for driveaway service in the movement of oversized chassis too big to load in a boxcar or on a truck. Its plant at Raymer is adjacent to yard facilities owned by Southern Pacific and leased to applicant. Inasmuch as extensive storage facilities are not maintained at the Raymer plant, transportation service must be closely coordinated with plant operations to avoid congestion or delay in deliveries to dealers. For these reasons, shipper desires the exclu-

sive service of one contract carrier so that there will be close cooperation and no division of responsibility. Use of any other carrier would require outgoing shipments to be dispatched through shipper's incoming gate, causing confusion and disarranging the operations at the plant which are geared to the use of applicant's service from its nearby yard. During the first 6 months of 1956, the Raymer plant shipped 4,452 units by rail to points in Arizona on the lines of Southern Pacific as compared with 792 units, or approximately 15 percent of the total, to other Arizona points.

Exceptants are authorized to conduct the proposed operations, have equipment suitable for the transportation of shipper's vehicles, and are experienced in transporting the considered commodities. Robertson transports vehicles principally for the Chrysler Corporation; Hadley is under

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[fol. 22] contract with and serves principally the Ford Motor Company; and B & H's contract carrier service has been rendered principally for the Studebaker-Packard Corporation, which ceased assembling vehicles in this area approximately 30 days prior to the hearing herein.

In our opinion, the evidence reasonably establishes that General Motors requires from its Raymer plant a personalized service in the movement of its automobiles and trucks similar to that which is presently being rendered by applicant from other points. Applicant has served General Motors as a contract carrier for a number of years and a grant of the authority sought would enable it to furnish a needed enlarged service. Inasmuch as the considered traffic has been moving principally by rail, institution of the proposed service should have no adverse effect on existing motor carriers. Since the evidence relates only to a need for service from the General Motors-Chevrolet plant at Raymer, any authority granted will be limited to that plant site as the point of origin and as above indicated will be restricted to service for a named shipper. Driveaway service and truckaway service are required by General Motors and a grant of authority for both methods of transportation will enable applicant to furnish a complete service.

By its Sub 37 application applicant desires to enlarge the service proposed under its Subs 34, 35, and 36 applica-

tions from the General Motors Chevrolet plants at Raymer and Oakland to cover all points in the destination States rather than only to those which are stations on the rail lines of Southern Pacific. It also proposes a new service from the General Motors Buick-Oldsmobile-Pontiac plant at South Gate. In addition to its Raymer and Oakland plants, General Motors maintains a plant for the assembly of Buick, Oldsmobile, and Pontiac automobiles at South Gate. The

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[fol. 23] two Oakland plants are within the corporate limits of that city, and are designated as Plants Nos. 1 and 2. Plant No. 1, so far as applicant is concerned, is the shipping point for both plants. The Raymer plant is in Los Angeles, Calif., at a rail point known as Raymer, and the South Gate Plant is in South Gate, a point just outside Los Angeles. A small number of the automobiles and trucks manufactured at these three plants move on government bills of lading in which the government agency concerned rather than General Motors designates the transporter. These shipments have for the most part been handled by existing motor common carriers, including Convoy, Insured Transporters, and Robinson. The table below shows the total production and the number of vehicular units shipped from the Oakland and Raymer plants to points in the destination States covered by the Sub 37 application in 1955, not including interstate points presently served by applicant.

<i>Destination States</i>	<i>Automobiles and Commercial Vehicles</i>	
	<i>Oakland</i> (number)	<i>Raymer</i> (number)
Arizona		2,453
Idaho	5,292	2,454
Nevada	122	885
New Mexico		165
Oregon	5,401	297
Utah	41	6,113
Washington	24,805	473
Total	35,661	12,840
Total Plant Production	125,516	122,649

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[fol. 24] Production at the South Gate plant in 1955, is not shown of record. Actual movements by rail from the latter

plant to points covered by the Sub 37 application for the first 3 months of 1955 were: 1,114 units to Arizona, 246 to Idaho, 36 to Montana, 550 to Nevada, 3,118 to Oregon, 221 to Utah, and 2,857 to Washington. Service with connecting rail carriers is required for deliveries in Washington, Idaho, Montana, eastern Oregon, southern Nevada, Utah, northern Arizona, and New Mexico. If the Sub-37 application is granted, all of the involved traffic moving by rail from Raymer and approximately one-half of that moving by rail from Oakland and South Gate would be diverted to applicant, with a concomitant decrease in the tonnage tendered to the connecting rail lines.

Applicant presently is providing General Motors with motor transportation in the movement of a substantial volume of traffic to intrastate points in California and to interstate points within the scope of its existing permits. Although it also holds temporary authority to serve points in Oregon, its service has not been used to that State. As at the Raymer plant, applicant's receiving yards are immediately adjacent to the loading platforms at the Oakland and South Gate assembly plants and its motor operations fully integrated with shipper's manufacturing operations at those plants. Its operating ratio and net profit, respectively, on its contract carrier operations for General Motors amounted to 87 percent and \$90,699 in 1953; 83.7 percent and \$119,375 in 1954; 86.8 percent and \$174,879 in 1955; and 87.9 percent and \$129,245 during the first 11 months of 1956.

The proposed service is supported by General Motors in order to obtain faster transportation on shipments requiring expedited handling; direct deliveries to dealers at

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[fol. 25] off-rail points; more flexible and expeditious handling of consolidated shipments; and to meet the competition of other automobile manufacturers, notably, Ford and Chrysler, which have motor service available. As in the Sub 35 and Sub 36 applications, shipper's representatives indicated that driveaway service will be required for occasional shipments of oversized vehicles too large to load in a boxcar or on a truck, and also for occasional emergency shipment of automobiles. Shipper desires the use of a motor contract carrier authorized to meet all of its requirements from each plant and is admittedly unwilling to utilize

other existing motor facilities. It alleges that the existing common carriers are unable to offer the personalized and integrated service provided by applicant; that the services of the existing contract carriers are in some instances dedicated to service for its competitors; and that none of these carriers is as conveniently located for receiving its production as applicant. Should the requested authority be denied, General Motors indicates that it will either support the application of an independent motor contract carrier presently serving a branch plant at Arlington, Tex., identified as Texas Auto Transports, Inc., for similar authority, or institute proprietary operations.

Six rail and seven motor protestants presented evidence in opposition to the Sub 37 application. The rail protestants are (1) the Union Pacific Railroad Company which connects with Southern Pacific at Los Angeles and serves points in Nevada, Utah, Idaho, and Montana, (2) the Northern Pacific Railway Company which connects with Southern Pacific at Portland, Oreg., and serves points in Washington, Idaho, and Montana, (3) the Great Northern Railway Company which connects with Southern Pacific at Portland

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[fol. 26] and there receives traffic moving to destinations in Washington, Idaho, and Montana, (4) the Spokane, Portland & Seattle Railway, hereinafter called S P&S, a jointly-owned subsidiary of Great Northern and Northern Pacific, operating between Portland, Oreg., and Spokane, Wash., (5) the Bamberger Railroad Company, hereinafter called Bamberger, connecting with Southern Pacific at Ogden, Utah, and operating between Ogden and Salt Lake City, Utah, and (6) the Portland Traction Company, a short-line carrier serving the Portland, Oreg., area. For the fiscal year ending August 31, 1956, Union Pacific participated in the movement or delivery of 7,979 carloads of vehicular traffic from California points, the great majority originating at one or the other of the three General Motors California plants. All references to General Motors traffic in the discussion which follows relates to shipments of automobiles, trucks or buses from these three plants to points in the destination States named in the application. The gross revenues derived from the traffic handled for General Motors amounted to approximately \$1,073,000. In 1955,

Northern Pacific derived revenues of \$366,000 and Great Northern \$370,599 on General Motors traffic received from Southern Pacific, while in 1956 SP&S delivered 659 carloads, Bamberger 185 carloads, and the Portland Traction Company approximately 2,290 carloads, of General Motors traffic. The connecting-line railroads fear the loss of all or substantial portion of this traffic if the application is approved.

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[fol. 27] The opposing motor carriers are authorized and equipped to engage in truckaway or driveaway service and desire to participate in shipper's traffic to the extent of their operating rights. Convoy, a common carrier, holds initial authority to transport automobiles and trucks, in truckaway service, from Richmond, Calif., to points in Idaho, Oregon, and Washington, serving Oakland as a point in the Richmond commercial zone. It also holds secondary authority to deliver such vehicles to much of the destination territory here involved through interchange with motor carriers able to originate traffic at shipper's other California plants. Its terminal closest to Oakland is at San Jose, Calif., 30 miles away. It is willing, however, to establish terminal facilities at or near Oakland plant if assured sufficient traffic. It performs substantial truckaway operations for Ford from its plants at Maywood and Milpitas, Calif. Its authority from Richmond has been dormant since de-activation of the Ford plant at that point in 1955.

Transport Storage & Distributing Company is authorized to transport (1) new and used automobiles and trucks, in driveaway service, between Seattle, Wash., and points in Washington west of the summit of the Cascade Mountains, and Portland, and (2) automobiles and trucks, new or used, in secondary movements, in truckaway service, between Seattle, on the one hand, and, on the other, Portland and points in Washington, over irregular routes. It maintains warehouse and storage facilities at Seattle and Portland and operates, among other equipment, five trailers especially designed for transporting automobiles. Its operations consist of the storage, servicing, and delivery

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[fol. 28] to dealers of new automobiles and trucks arriving at Seattle and Portland by rail. It serves approximately 180 General Motors dealers in Washington, and is the exclu-

sive agent for all ten General Motors dealers in Alaska. It alleges that the granting of the application would result in a loss of 65 percent of its total traffic and force a discontinuance of its operations. During the fiscal year ending June 30, 1956, it sustained a net loss of \$6,746.

Hadley holds permits authorizing the transportation, in initial movements, in truckaway service, of automobiles from points in Los Angeles County, Calif., which includes Raymer and South Gate, to points in Idaho and Montana, and from Oakland to points in Arizona, and of automobiles and trucks from points in Los Angeles County to points in Arizona, Nevada, New Mexico, and Utah.

B & H, a contract carrier, is authorized to transport automobiles, in truckaway and driveaway service, in initial movements, from Vernon, Calif., an incorporated community just outside Los Angeles, to points in Arizona and Nevada, and motor vehicles, except trailers, in initial movements, from Vernon to points in Utah, Idaho, and Oregon, and Washington, serving Raymer as a point within the Vernon commercial zone. Robertson holds certificated authority to transport automobiles and trucks, in initial movements, in truckaway service, from the General Motors plants at Raymer and South Gate to points in Arizona, Nevada, and Oregon.

By agreement between the parties the evidence of the two opposing motor carriers next discussed and of NATA was submitted by verified statements. Western Auto Transports, Inc., hereinafter called Western, holds certificated authority to transport new automobiles and trucks, in

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[fol. 29] truckaway service in initial movements, from, among other points, Raymer and South Gate to points in Utah, and new automobiles, in truckaway service, in secondary movements, between points in California, Idaho, Nevada, Utah, and Washington. It maintains terminals at Los Angeles and Richmond and is fully equipped to handle the traffic. If requested by the traffic department of General Motors, it would file an application for authority to serve the General Motors plants at Los Angeles and Oakland to any destination territory beyond its present authority in the transportation of new automobiles and trucks in truckaway and driveaway service, as either a

common or a contract carrier. Kenosha Auto Transports Corporation, which apparently lacks any authority to serve shipper's California plants, is likewise willing to file application for common or contract carrier authority if requested so to do by General Motors.

Subsequent to the hearing herein, pursuant to the findings in *Insured Transporters, Inc., Ext.—Automobiles, Oakland*, 74 M.C.C. 577, Insured Transporters was issued a certificate in No. MC-107227 (Sub-No. 47), dated April 21, 1958, authorizing the transportation of automobiles, in initial movements, in truckaway service, from the sites of the General Motors assembly plants in Oakland to points in Arizona, California, Colorado, Montana, Nevada, New Mexico, Utah, and Wyoming, over irregular routes. This application was supported by various agencies of the United States Government, but not by General Motors.

NATA points out that with respect to the area involved in the instant application, the two other major automobile companies each have West Coast manufacturing plants

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[fol. 30] from which automobiles are distributed to points in western states; that Ford has plants at Maywood and Long Beach in the Los Angeles area and at Milpitas, Calif., in the San Francisco area; that Chrysler has a plant at Maywood; that the various rail carriers serving this territory, including Southern Pacific, publish group rates on automobiles from all manufacturing origins in the Los Angeles and San Francisco areas to common destinations; and that thus each automobile manufacturer is charged the same common-carrier rail rates as its competitors from such origins.

A review of the evidence in the Sub 37 proceeding establishes a need for applicant's proposed service in the movement of new automobiles and trucks from the sites of the three California assembly plants of General Motors at Oakland, Raymer, and South Gate only to those points in the destination States recommended by the examiner which are stations on the rail lines of Southern Pacific. We deem it of controlling significance here that in the territory under consideration automobiles are commodities which can be economically and advantageously transported by rail to on-rail points, and that the nature of

the movements from these three California plants is such as to render it unlikely that a significant amount of freight would be diverted from Southern Pacific to its motor contract carrier subsidiary if the proposed service were limited to Southern Pacific points. It does not appear that the amount of traffic likely to be diverted under these conditions would be large enough to afford either Southern Pacific or applicant an unfair competitive advantage over other carriers or to constitute a destructive competitive threat to other automobile producers. On the other hand,

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[fol. 31] use by General Motors of applicant's proposed service on a Statewide basis would permit Southern Pacific to invade the territory served by other rail lines and by the existing motor carriers and would inevitably result in the diversion of a large percentage if not all of the traffic now moving in rail joint-line service. Such eventuality has in no way been justified and the public interest in forestalling it is apparent. Shipper's argument that motor service is needed to nonrail points to meet the competition of other automobile producers can be accorded little probative weight in face of its continued refusal to make use of the available services of the protesting motor carriers. The fact that both General Motors and applicant have cooperated to permit the latter to establish receiving yards adjoining the former's assembly plants and thereby to block the use by other carriers of normal egress routes, has no bearing upon the adequacy or inadequacy of existing motor transportation facilities. On the other hand, insofar as Southern Pacific points are concerned, the authority sought represents no more than a request by Southern Pacific to perform truck transportation, albeit contract-carrier transportation, to the same points it serves as a rail carrier. Motor protestants argue that the grant of authority to such points as recommended by the examiner reflects a discriminatory bias favoring the protesting railroads and penalizing the protesting motor carriers. However, it is clear that all of the traffic except that moving on government bills of lading is now originated by Southern Pacific, and that regardless of whether the Sub 37 application is granted or denied, as concerns rail points of the Southern Pacific, there will be

little or no diversion to the existing independent motor operators. In other words, a grant of authority to applicant

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[fol. 32] to serve only those points which are stations on the lines of Southern Pacific should not result in any appreciable alteration of the existing competitive situation and should not unduly restrain competition or in any degree adversely affect the operations of other carriers.

Authority to transport trucks includes authority to transport trailers, and accordingly trailers will be excluded from any grant of authority herein. Although the need for driveaway service is not so great as that for truck-away, both are required by shipper and a grant of authority for both methods of transportation will enable applicant to furnish a complete service.

General Discussion—Restrictions.

As seen, the proof in connection with each of the considered applications in our opinion justifies a grant of some authority. Protestants, however, in various pleadings and at oral argument contend that all four of the considered applications should be denied (1) because the proviso in section 5(2)(b)⁴ must be read into section 209 and operates as a bar to the issuance of a contract carrier permit to an applicant railroad or an applicant railroad subsidiary, and (2) because the holding by applicant of the permits it seeks herein and its presently-held certificates would not be consistent with the public interest and the national transportation policy.

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[fol. 33] After careful study we are impelled to disagree. Our statutory authority to impose terms and conditions in permits issued under section 209 is derived from part (b) of that section, and not from section 5(2)(b). The rejection by the Commission of a similar contention with respect to section 207 in *Rock Island Motor Transit Co.*

⁴ This provides that the Commission shall not authorize, a railroad or its affiliate to acquire a motor carrier unless it finds that "the transaction proposed will be consistent with the public interest and will enable such carrier to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition."

Com. Car. Application, 63 M.C.C. 91, 100, was sustained by the United States Supreme Court on December 9, 1957, in *American Trucking Associations Inc., et al. v. United States*, 355 U.S. 141, subsequent to the argument in these cases. Therein the Supreme Court held that the Congress did not intend the rigid requirement of section 5(2)(b) to be considered as a limitation on certificates issued under section 207 but added (pp. 151-152):

* * * that the underlying policy of section 5(2)(b) must not be divorced from proceedings for new certificates under section 207. Indeed the Commission must take "cognizance" of the National Transportation Policy and apply the Act "as a whole". But for reasons we have stated we do not believe that the Commission acts beyond its statutory authority when in the public interest it occasionally departs from the auxiliary and supplementary limitations in a section 207 proceeding.

Although the Court, in that proceeding, was dealing only with applications for common carrier certificates, we think that undoubtedly the same principle applies here where contract carrier permits are sought and in reaching the conclusions above indicated, namely, that some authority should be granted in each proceeding, we have, in fact, given due consideration to the National Transportation Policy and to the principles which underlie section 5(2)(b).

While we have power to impose restrictions in any permit granted authorizing motor contract carrier operations, such action is not required by either section 5(2)(b)

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[fol. 34] or the provisions of the National Transportation Policy; and it remains to be considered next whether any restrictions should be imposed here. The restrictions usually imposed in common carrier certificates issued to rail carriers or their affiliates in order to insure that the service rendered thereunder shall be no more than that which is auxiliary to or supplemental of train service are: (1) the service by motor vehicle to be performed by rail carrier or by a rail-controlled motor subsidiary should be limited to service which is auxiliary to or supplemental of rail service, (2) applicant shall not serve any point

not a station on the railroad, (3) a key point requirement or a requirement that shipments transported by motor shall be limited to those which it receives from or delivers to the railroad under a through bill of lading at rail rates covering, in addition to the movement by applicant, a prior or subsequent movement by rail; (4) all contracts between the rail carrier and the motor carrier shall be reported to the Commission and shall be subject to revision if and as the Commission finds it to be necessary in order that such arrangements shall be fair and equitable to the parties, and (5) such further specific conditions as the Commission, in the future, may find it necessary to impose in order to insure that the service shall be auxiliary to or supplemental of, train service. However, it was granted by special circumstances certificates have been issued without these restrictions to railroads or their affiliates, whether acquired by purchase as in *Louisville, N. E. & C.R. Co., Purchase*, *Meerman*, 45 M.C.C. 6, and *Southern Pacific Company, Detroit*; *Pacific Motor Trucking Co., Purchase*, *Logan Trucking Co.*, 60 M.C.C. 373; or as the result of an

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fol. 35) application filed under section 207, as in *Texas & Pacific Motor Transport Co., Et. Point Blue, La.*, 47 M.C.C. 425, *Burlington Truck Lines, Inc., Et. Iowa*, 48 M.C.C. 546, and *Rock Island Motor Transit Co., Com. Car. Application, supra*.

It has long been recognized by this Commission that substituted motor service in lieu of rail operations constitutes common carriage. *Substituted Freight Service*, 22 I.C.C. 683; *Willott Co., of Indiana, Inc., Extension*, *Ill. Ind., and Ky.*, 21 M.C.C. 405; *Louisiana, A & T. Ry. Co., Common Carrier Application*, 22 M.C.C. 213; *Hagerly Contract Carrier Application*, 26 M.C.C. 413, and *Subst. Extension*, *Woodbury and Elm, N. J.*, 34 M.C.C. 340. In the two last cited proceedings, the applicants sought permits to transport less than carload freight between stations on a railroad. Neither applicant proposed to have direct dealings with the general public, and each proposed to dedicate his equipment to the railroad exclusively. In each instance the proposed operations were found to be those of a common carrier, and the applicants therein were granted certificates limited to service auxiliary to or

supplemental of rail service. Since substituted service is common carriage at rail rate and on rail billing, all of the restrictions usually employed to apply to substituted motor-for-rail service could not be imposed in a permit, for to do so would be to command the holder to render a common-carrier service. We conclude, therefore, that there is no basis for imposing the usual restrictions numbered 1, 3, or 5 in any permits which may be granted in these proceedings. On the other hand, we do not believe that Congress intended, except in unusual circumstances, to allow any railroad, through the medium of a motor

[Sheet 29
fol. 36] subsidiary, to provide all-truck service as a contract carrier in competition with other rail lines and independently operated motor carriers without safeguards to insure that such service shall not be broader in scope than its rail operation. In the absence of any showing of unusual conditions in these proceedings, any permits issued to applicant will contain a territorial limitation of the service authorized to points which are stations on the Southern Pacific railroad. Also a restriction is warranted preserving to the Commission the right to impose in the future any restrictions or conditions which may then appear to be necessary or desirable in the public interest. Nothing in *Scott Bros., Inc.*, *Extension of Operations*, *Jensen Co., supra*, or in the proceedings in which applicant herein obtained unrestricted contract carrier authority, is inconsistent with the foregoing.

Dual Operations

The prior report in the Sub 34 proceeding fully discusses the dual operation question and needs little enlargement of repetition. The issue was argued extensively previously and the argument here is not convincing that a different conclusion is warranted. Another wholly owned motor carrier subsidiary of Southern Pacific, Southern Pacific Transport Company, holds certificates in No. MC 36319 and various subnumbers thereto authorizing substituted motor-for-rail service auxiliary to or supplemental of the rail operations of Southern Pacific and those

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fol. 37] of an affiliated rail line, Texas & New Orleans

Railroad Company, generally over regular routes between specified points in Texas and Louisiana. The additional dual operations occasioned by the grants of contract-carrier authority herein would not be such an aggravation of the existing dual operations of applicant or between applicant and the commonly controlled Texas subsidiary as to require disapproval. Compare *Texas Auto Transports, Inc., Contract Carrier Application*, 62 M.C.C. 473, 479, and *Complete Auto Transit, Inc.,—Extension, Willow Run*, 71 M.C.C. 383, 388.

As indicated, the granting of the instant applications would allow applicant to serve the same shipper both as a contract and common carrier by motor vehicle and, through its parent, as a common carrier by rail. In the 54-page consolidated certificate issued to applicant in No. MC-78786, dated July 27, 1956, the 32 different commodity descriptions grouped together under an alphabetical key on sheets 37 through 39 include the descriptions "general commodities, except assembled automobiles" in descriptions F, K, L, Z-1, and Z-6, and "general commodities" with no exceptions referring to assembled automobiles and trucks in descriptions D, H, J, N, S, T, U, Y, Z, and Z-3. Applicant has indicated its willingness to have its outstanding certificates specifically restricted against the transportation of assembled automobiles, trucks, and buses. Although there is no evidence which suggests that applicant has ever or is likely to transport such commodities as a common carrier in substituted motor for rail service, to forestall any possibility of discrimination because of the dual operations involved, our grants

Sheet 31 [fol. 38] here will be made subject to the condition that applicant request in writing the imposition of a restriction against the transportation of automobiles and trucks in its outstanding certificates in No. MC-78786 and various subnumbers thereto which are not specifically restricted against such transportation. However, our approval of the dual operations at this time should not be construed as any waiver of our right to reconsider this issue at any future date should the present facts change so as to bring about an improper competitive situation or result in improper discrimination or preference.

Findings

We find that operation by applicant, in interstate or foreign commerce, as a contract carrier by motor vehicle of the commodities and from and to the points indicated in connection with each application as set forth in the appendix hereto, over irregular routes, limited to the performance of transportation under a continuing contract or contracts with General Motors Corporation, and subject to the condition that there may from time to time in the future be attached to the permits granted herein such reasonable terms, conditions and limitations as the public interest and national transportation policy may require, that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and our rules and regulations thereunder; that permits authorizing such operations should be issued upon receipt of a written request from applicant for the imposition of a restriction against the transportation of automobiles and trucks in its outstanding certificates in No. MC-78786 and various subnumbers

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[fol. 39] thereunder which are not specifically restricted against such transportation; and that the applications in all other respects should be denied.

We further find that the holding by applicant of the permits granted herein and those heretofore issued, and of the certificates heretofore issued to it authorizing common carrier operations in the same territory, and the holding by Southern Pacific Transport Company of the certificates heretofore issued to it, will be consistent with the public interest and the national transportation policy.

Upon compliance by applicant with the requirements of sections 215, 218, and 221(c) of the act, with our rules and regulations thereunder, and with the requirements established in *Contracts of Contract Carriers*, 1 M.C.C. 628, appropriate permits will be issued. An order will be entered denying the applications except to the extent granted herein.

Freas, *Chairman*, concurring in part:

I concur in the action taken by the majority, but would go further.

The three plants, respectively established by General Motors in 1914, 1936, and 1947, are served by one rail carrier, Southern Pacific Company. In 1929, the Oakland plant commenced the use of a motor carrier whose operations were acquired by applicant herein in 1935. Applicant has continued to serve the Oakland plant in intrastate commerce since 1935 and also has served the other two plants in intrastate commerce since their establishment. In 1944, this Commission issued a permit to applicant authorizing the transportation of new automobiles,

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[fol. 40] trucks, and buses, in initial movements, from Oakland to Hawthorne, Nev., and points in Nevada which are stations on the rail lines of Southern Pacific Company. In 1950, similar transportation was authorized from Raymer to Los Angeles Harbor and from Los Angeles to Calexico and San Ysidro, Calif., and, in 1955, from Oakland to Carson City and Minden, Nev. General Motors pays the freight charges on shipments to its dealers and for all such traffic now employs either the rail service of Southern Pacific Company and its rail carrier connections or the motor carrier service of applicant. It appears also that protestant Transport Storage & Distributing Co. has been providing service from rail heads to points in Washington for General Motors dealers.

In maintaining service for General Motors, applicant at a substantial investment has acquired an equipment fleet of 317 units, together with receiving and storage yards located adjacent to and operated as integral parts of the plants, and has developed a trained organization of some 200 people devoted exclusively to the transportation needs of the three General Motors plants. Applicant's contract carrier operations are dedicated solely to service for General Motors. They have been conducted at a profit.

It is clear from the evidence that applicant has long been providing and is in position to render a bona fide contract carrier service of a highly personalized type particularly responsive to the distinct shipping requirements at the plants. Applicant's present operations are substantial and the proposed service is a logical and natural extension thereof, designed to meet the additional needs of the shipper.

The protesting motor carriers have obtained operating rights and acquired service facilities on the basis of the

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[fol. 41] transportation needs of automobile manufacturers other than General Motors, which manufacturers are competitive therewith. With one exception the existing motor carriers have handled only a very negligible amount of the freight involved. Such carriers will, therefore, suffer no loss of traffic as a result of the expanded service by applicant. A different result, however, will obtain in the instance of the rail carrier connections of Southern Pacific Company. The connecting rail carriers and protestant Transport Storage & Distributing Co. have shown that they will suffer loss of traffic and the corresponding revenues therefrom to the detriment of their services.

Considering and weighing, as we are now required to do under the amended provisions of section 209(b), the effect which granting the application would have upon the services of the protesting carriers and the effect which denying the permit would have upon the applicant and its shipper, as well as the changing character of the shipper's requirements, it is my opinion that the record justifies the issuance of a broader permit in No. MC-78787 (Sub-No. 37). In the latter proceeding I would grant applicant authority to all of the destination points sought, except those which are stations on the lines of the connecting rail carriers of Southern Pacific Company, but not stations on the lines of the latter, and except those in Washington served by Transport Storage & Distributing Co.

Arpaia, Commissioner, dissenting:

Congress declared it a policy that the various forms of transportation be kept separate and competitive. The

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[fol. 42] Commission has never deviated from applying this principle except where special and unusual circumstances demand it. The Supreme Court has confirmed this position in *American Trucking Associations v. United States*, 355 U. S. 141. It is for Congress and not for the Commission to change policy.

In the situation presented here, there are no special or unusual circumstances and the majority in effect, admits

this by granting a permit to the applicant, an affiliate of the Southern Pacific Company, for only a part of the service proposed. If true contract carriage were needed and the circumstances were compelling, then, logically, authority should be granted to all points to which the shipper professes a need for such service.

In essence, the majority has not only failed to follow Congressional policy but has misapplied the Congressional mandate. It has protected rail protestants against invasion and competition yet has failed to extend protection to the motor carrier protestants. To accomplish this result, on the same set of facts, the shipper is found to be adequately served in common carriage by existing rail connections. Such an anomalous result suggests inherent doubt as to the soundness of the majority's position. If the special circumstances which entitle the affiliate of a railroad to motor contract carrier authority are present, then there should be no compromise with the facts and the applicable principles.

Commissioner MURPHY, with whom Commissioner McPHERSON joins, dissenting:

I am unable to agree with the view of the majority that dual operations may be approved and this rail subsidiary granted unrestricted motor carrier authority.

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[fol. 43] Even if these issues were not present, I would be extremely reluctant to grant the authority sought as there has been no showing of a real need for the proposed service. There is adequate motor common and contract carrier service available and this record reflects nothing more than the shipper's preference for this applicant and its adamant refusal to utilize the services of other carriers.

The majority concedes that, in the absence of special circumstances, a grant of unrestricted motor common or contract carrier authority to a rail subsidiary is not justified; and I submit that in the face of the views expressed by the Supreme Court in *American Trucking Associations v. United States*, 355 U. S. 141, no other conclusion could possibly be reached. Obviously these special circumstances

must involve something more than, as in these proceedings, the fact that a shipper would prefer and find it convenient to utilize the services of a given carrier and that apparently a grant of authority would not have a material adverse effect on the operations of existing carriers. To satisfy this condition it must be shown that there is a compelling need for service that can only be met by the particular applicant. The grants of authority by this Commission in the *American Trucking Associations* case, *supra*, and in *Scott Brothers, Inc. Extension—Jersey City*, 34 M.C.C. 163, were based on findings that there was a total absence of satisfactory motor carrier service. There is no merit to the contention of the majority that its action here is consistent with these decisions.

The majority has limited the grant of authority to service of points on the lines of the Southern Pacific Railroad. This limitation cannot be a substitute for the necessity of

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[fol. 44] special or unusual conditions in these cases. This limitation merely defines the territorial scope of this grant of unrestricted motor carrier authority and is actually of little real substance since it will permit the applicant to provide service at a majority of the important traffic centers in the destination territory involved. To these points the service authorized will be wholly unrestricted and if such a grant is proper, simple logic requires a similar grant to off-line points sought by the applicant. The fact of the matter is, however, that a grant of unrestricted authority, regardless of its extent, is not justified on this record.

The objectionable dual operations involved provide a further reason for denying these applications. This question is dealt with summarily in the report even though it is doubtful that there has been a proceeding before us in which exhaustive consideration of this issue was more justified. We have consistently held that the propriety of approving dual operations is to be carefully considered in every proceeding in which this question arises, including those involving subsequent applications by a carrier now conducting dual operations with our approval, and is to be determined upon the basis of the particular circumstances of each case. I, therefore, do not consider of con-

trolling significance insofar as our disposition of this issue in the instant case is concerned the fact that dual operations by this carrier have been approved in several unopposed application proceedings involving relatively limited contract carrier operations. In my opinion, we would be entirely justified in withholding our approval of further expansion of this carrier's dual operations. The provisions of

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[fol. 45] section 210 were clearly designed to preclude the authorization of both common and contract operations by the same motor carrier under circumstances in which an opportunity for undue preference and unjust discrimination would be created or expanded. In numerous cases, we have held that the mere opportunity for indulging in the unfair or discriminatory practices contemplated by section 210 is sufficient to bar approval of dual operations. It would be difficult to visualize a situation in which more opportunity for such practices would be present than in the instant case in which a single shipper will be served by applicant in its dual capacity as a common carrier of general freight and a contract carrier of automobiles and trucks and by the Southern Pacific as a common carrier by railroad. The applicant has wholly failed to show good cause for approval of the dual operations here involved and the granting of approval under the circumstances of these cases establishes a precedent that will totally destroy the future effectiveness of section 210.

I, therefore, would deny the applications in their entirety.

COMMISSIONER MINOR, being necessarily absent, did not participate in the disposition of these proceedings.

COMMISSIONER WALRATH was necessarily absent but had he been present at the time of the adoption of the report by the majority he would have adhered to the position

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[fol. 46] taken by him in the prior report (71 M.C.C. 561), and, to the extent not inconsistent therewith, would have joined in the dissenting expressions of Commissioners Arpaia and Murphy.

COMMISSIONER GOFF did not participate in the disposition of these proceedings.

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APPENDIX

Authority Granted

No. MC-78787 (Sub-No. 34)

Automobiles and trucks, except trailers, in initial movements, in truckaway service, from the site of General Motors Corporation's Plant No. 1 at Oakland, Calif., to points in Oregon which are stations on the lines of Southern Pacific Company.

No. MC-78787 (Sub-No. 35)

Automobiles and trucks, except trailers, in initial movements, in truckaway and driveaway service, from the site of the General Motors Corporation's Plant No. 1 at Oakland, Calif., to Austin, Tonopah, and Yerington, Nev.

No. MC-78787 (Sub-No. 36)

Automobiles and trucks, except trailers, in initial movements, in truckaway and driveaway service, from the site of the General Motors Corporation's plant at Raymer, Calif., to points in Arizona which are stations on the rail lines of Southern Pacific Company.

No. MC-78787 (Sub-No. 37)

(1) automobiles and trucks, except trailers, in initial movements, in truckaway and driveaway service, (a) from the site of General Motors Corporation's Plant No. 1 at Oakland, Calif., to points in Arizona, New Mexico, and Utah, and (b) from the site of the General Motors Corporation's plant at Raymer, Calif., to points in Nevada, New Mexico, Oregon, and Utah, and (2) automobiles, in initial movements, in truckaway and driveaway service, from the site of the General Motors Corporation's plant at South Gate, Calif., to points in Arizona, Nevada, Oregon, and Utah, with service restricted in each instance to points which are stations on the rail lines of Southern Pacific Company.

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ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 9th day of September, A. D. 1958.

No. MC-78787 (Sub-No. 34)

PACIFIC MOTOR TRUCKING COMPANY EXTENSION—OREGON

No. MC-78787 (Sub-No. 35)

PACIFIC MOTOR TRUCKING COMPANY EXTENSION—
NEW MOTOR VEHICLES TO ADDITIONAL NEVADA POINTS

No. MC-78787 (Sub-No. 36)

PACIFIC MOTOR TRUCKING COMPANY EXTENSION—
NEW MOTOR VEHICLES, RAYMER, CALIF., TO ARIZONA

No. MC-78787 (Sub-No. 37)

PACIFIC MOTOR TRUCKING COMPANY EXTENSION—
AUTOMOBILES—CALIFORNIA ASSEMBLY PLANTS
TO 7 WESTERN STATES

It appearing, That on May 8, 1957, the Commission made and filed its report on oral argument, 71 M.C.C. 561, and order in No. MC-78787 (Sub-No. 34), granting applicant a permit authorizing it to conduct certain operations as a contract carrier by motor vehicle, and denying the application in all other respects;

It further appearing, That on August 16, 1957, on further consideration of the records in the above-entitled proceedings, and of the petitions of American Trucking Associations, Inc., and the Contract Carrier Conference of American Trucking Associations, Inc., and the reply of applicant, the No. MC-78787 (Sub-No. 34) proceeding was reopened for reconsideration on the present record, but solely with respect to whether the motor contract-carrier authority granted therein should be made subject to the substituted service restrictions usually imposed in certificates issued to rail carriers or motor carrier affiliates of rail carriers, and the four above-entitled proceedings consolidated for disposition in one report;

It further appearing, That on November 6, 1957, the Commission assigned the above-entitled proceedings for oral argument on all of the issues involved, which was held December 4, 1957;

And it further appearing, That reconsideration of the matters and things involved in No. MC-78787 (Sub-No. 34) has been given, and that investigation of the matters and things involved in No. MC-78787 (Sub-Nos. 35, 36, and 37) has been made, and that the Commission, on the date hereof, having made and filed herein a consolidated report on oral argument containing its findings of fact and conclusions thereon, which report and the report of May 8, 1957, in No. MC-78787 (Sub-No. 34) are hereby referred to and made a part hereof:

It is ordered, That said applications, except to the extent granted in said report, be, and they are hereby, denied.

By the Commission.

Harold D. McCoy, Secretary.

(SEAL)

[fol. 50]

INTERSTATE COMMERCE COMMISSION
Washington, D. C.

September 22, 1958.

No. MC-78787 (Sub-No: 34)

PACIFIC MOTOR TRUCKING COMPANY EXTENSION—OREGON

No. MC-78787 (Sub-No. 35)

PACIFIC MOTOR TRUCKING COMPANY EXTENSION—
NEW MOTOR VEHICLES TO ADDITIONAL NEVADA POINTS

No. MC-78787 (Sub-No. 36)

PACIFIC MOTOR TRUCKING COMPANY EXTENSION—
NEW MOTOR VEHICLES, RAYMER, CALIF., TO ARIZONA

No. MC-78787 (Sub-No. 37)

PACIFIC MOTOR TRUCKING COMPANY EXTENSION—
AUTOMOBILES—CALIFORNIA ASSEMBLY PLANTS
TO 7 WESTERN STATES

Notice to the Parties:

On September 17, 1958, copies of the report and order of the Commission on oral argument; filed and entered September 9, 1958, were served on interested parties. In reproducing copies of the report for service, certain errors were made in the findings on sheet 31. Please substitute the attached sheet 31 for the one contained in the copy of the report heretofore forwarded to you.

Harold D. McCoy, Secretary.

Att.

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[fol. 51] subject to the condition that applicant request in writing the imposition of a restriction against the transportation of automobiles and trucks in its outstanding certificates in No. MC-78786 and various subnumbers thereto which are not specifically restricted against such transportation. However, our approval of the dual operations at this time should not be construed as any waiver of our right to reconsider this issue at any future date should the present facts change so as to bring about an improper

competitive situation or result in improper discrimination or preference.

Findings

We find that operation by applicant, in interstate or foreign commerce, as a contract carrier by motor vehicle of the commodities and from and to the points indicated in connection with each application as set forth in the appendix hereto, over irregular routes, limited to the performance of transportation under a continuing contract or contracts with General Motors Corporation, and subject to the condition that there may from time to time in the future be attached to the permits granted herein such reasonable terms, conditions and limitations as the public interest and national transportation policy may require, will be consistent with the public interest and the national transportation policy; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and our rules and regulations thereunder; and that permits authorizing such operations should be issued upon receipt of a written request from applicant for the imposition of a restriction against the transportation of automobiles and trucks in its outstanding certificates in No. MC-78786 and

[fol. 52]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title omitted]

MOTION OF PACIFIC MOTOR TRUCKING CO. FOR LEAVE TO
INTERVENE AS DEFENDANT—Filed October 8, 1958

Now comes the Pacific Motor Trucking Company, a corporation, of San Francisco, California, by Robert L. Pierce, T. A. Miller, William E. Meinhold, and Edward M. Reidy,

its attorneys, and moves the Court pursuant to Rule 24(a) of the Rules of Civil Procedure and 28 U. S. Code, Section 2323, for an order permitting it to intervene as a defendant in this action. In support of this motion, Pacific Motor Trucking Company alleges that:

1. Complaint herein seeks to annul and set aside an order of the Interstate Commerce Commission dated September 9, 1958, in proceedings entitled "Pacific Motor Trucking Company Extension—Oregon," No. MC-78787 (Sub-No. 34), and various sub. numbers specified in the report of the Commission.

2. Pacific Motor Trucking Company was the applicant in the proceedings before the Interstate Commerce Commission and upon whose application the Commission's order was made, and as such party in interest is entitled as a matter of right to intervene herein as defendant and to file answer pursuant to the provisions of 28 U. S. Code, Section 2323, and Rule 24(a) of the Rules of Civil Procedure.

Wherefore, Pacific Motor Trucking Company prays for an order of this Court granting its intervention as a defendant in this suit and permitting it to file an answer to the complaint herein, and to submit oral arguments and briefs, and to be treated in all respects as a defendant in this suit.

Respectfully submitted,

Robert L. Pierce, William E. Meinhold, 65 Market Street, San Francisco 5, Calif.;

Edward M. Reidy, T. A. Miller, 205 Transportation Bldg., Washington 6, D. C.;

Attorneys for Intervening Defendant, Pacific Motor Trucking Company.

[fol. 54]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title omitted]

—MOTION OF GENERAL MOTORS CORPORATION FOR LEAVE TO
INTERVENE AS DEFENDANT—Filed October 8, 1958

Now comes the General Motors Corporation, of the State of Delaware, with headquarters at Detroit, Michigan, by Henry M. Hogan and Walter R. Frizzell, its attorneys, and moves the Court pursuant to Rule 24(a) of the Rules of Civil Procedure and 28 U. S. Code, Section 2323, for an order permitting it to intervene as a defendant in this action. In support of this motion, General Motors Corporation alleges that:

1. Complaint herein seeks to annul and set aside an order of the Interstate Commerce Commission dated September 9, 1958, in proceedings entitled "Pacific Motor Trucking Company Extension—Oregon," No. MC-78787 (Sub-No. 34), and various sub. numbers specified in the report of the Commission.

2. General Motors Corporation was an intervener in support of the application in the proceedings before the Interstate Commerce Commission, upon which application the Commission's order was made, and as such party in interest is entitled as a matter of right to intervene herein as defendant and to file answer pursuant to the provisions of 28 U. S. Code, Section 2323, and Rule 24(a) of the Rules of Civil Procedure.

Wherefore, General Motors Corporation prays for an order of this Court granting its intervention as a defendant [fol. 55] in this suit and permitting it to file an answer to the complaint herein, and to submit oral arguments and briefs, and to be treated in all respects as a defendant in this suit.

Respectfully submitted,

Henry M. Hogan, Walter R. Frizzell, 3044 W. Grand
Boulevard, Detroit 2, Michigan, Attorneys for In-
tervening Defendant, General Motors Corporation.

[fol. 56]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 2534-58

AMERICAN TRUCKING ASSOCIATIONS, INC., THE CONTRACT CARRIER CONFERENCE OF AMERICAN TRUCKING ASSOCIATIONS, INC., NATIONAL AUTOMOBILE TRANSPORTERS ASSOCIATION, CONVOY COMPANY, ROBERTSON TRUCK-A-WAYS, INC., HADLEY AUTO TRANSPORT, B & H TRUCKAWAY, WESTERN AUTO TRANSPORTS, INC., and KENOSHA AUTO TRANSPORT CORP., Plaintiffs,

—v.—

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, PACIFIC MOTOR TRUCKING COMPANY and GENERAL MOTORS CORPORATION, Defendants.

ANSWER OF PACIFIC MOTOR TRUCKING COMPANY, INTERVENING DEFENDANT—Filed October 24, 1958

Now comes Pacific Motor Trucking Company (hereinafter referred to as PMT) which was permitted to intervene as a defendant in these proceedings by order of court dated October 8, 1958, and answers the complaint filed by plaintiffs as hereinafter set forth:

First Defense

1. Admits the allegations of paragraph I, but alleges that plaintiffs do not suffer legal wrong from, and are not [fol. 57] adversely affected or aggrieved by, the order of the Commission here sought to be set aside and that none of plaintiffs has any standing to bring this action.

2. Admits, on information and belief, the allegations of paragraph II, except denies that B & H Truckaway is a common carrier by motor vehicle and alleges that instead

it is a contract carrier by motor vehicle. For further answer alleges that the scope of the pertinent operating authority of the six plaintiff motor carriers is set forth in detail in the report of the Interstate Commerce Commission of September 9, 1958, herein, attached as Appendix A to the complaint. For further answer alleges that all of the plaintiffs participated in the proceedings before the Interstate Commerce Commission now sought to be reviewed and were given full opportunity to express their positions at the hearings or argument before that body; that the Commission fully considered their contentions in its report in these proceedings; that the Commission found that the traffic involved is now moving exclusively by railroad, that, regardless of whether this authority were granted to PMT, there would be little or no diversion of this traffic to independent truckers such as plaintiffs, and that the grant of operating authority to PMT authorized in such report should not in any degree adversely affect the operations of other motor carriers; that plaintiffs would not benefit from having the Commission's order here attacked set aside since the Commission further found in its report that General Motors Corporation, the sole shipper for whom the authorized service by PMT was to be performed, indicated that should the requested authority be denied it would either support the application of an independent motor contract carrier other than any of plaintiffs or else itself institute proprietary operations; and that consequently plaintiffs have no standing to bring this suit to [fol. 58] set aside the Commission's order in such proceedings.

3. Admits the allegations of paragraph III, except denies:

(a) that PMT in its application MC-78787 (Sub. No. 37) or in any other application referred to in such paragraph sought authority to conduct contract carrier operations from the General Motors plants in Oakland and Remyer, California, to points in Montana, or from the General Motors plant in South Gate, California, to any point in New Mexico, and refers the Court to the Commission's

report and order of September 9, 1958, for a more complete and accurate statement as to the scope of the operating authority sought by PMT in these proceedings; denies (b) that the Commission's report and order of September 9, 1958, authorized Southern Pacific Company, which was not a party to the proceedings, to conduct any transportation operations through its wholly-owned subsidiary, PMT, and alleges that all authority granted in said report and order was granted to PMT to be exercised in its own right; denies (c) that the Commission herein authorized PMT to conduct unrestricted trucking operations and alleges that, while the Commission held it was not authorized under section 209(b) of the Interstate Commerce Act (49 U.S.C. sec. 309(b) to impose in a contract carrier permit certain restrictions usually imposed by it in common carrier certificates issued to motor carrier affiliates of rail carriers, to insure that the service thereunder shall be no more than that which is auxiliary to or supplemental of train service, because that would convert PMT into a common carrier as to such operations, it nevertheless did impose another of such usual restrictions, that limiting PMT service to points on the rail lines of its parent company, Southern Pacific Company; and denied (d) that the Commission's report and order of September 9, 1958, authorized PMT [fol. 59] to conduct trucking operations from the General Motors plant in South Gate, California, to points in New Mexico, and for further answer alleges that the authority granted to PMT in these proceedings is set out as an appendix to the Commission's decision of September 9, 1958, and is as follows:

Transportation of automobiles and trucks, except trailers, in initial movements in truckaway service and driveaway service: (a) from General Motors plant No. 1 in Oakland, California, to points in Oregon (limited to truckaway service), Arizona, New Mexico, and Utah, which are stations on the rail lines of Southern Pacific Company, and to Austin, Tonopah and Yerington, Nevada; (b) from the General Motors Corporation plant at Raymer, California, to points in Arizona, Nevada, New Mexico, Oregon, and Utah, lo-

cated on the rail lines of Southern Pacific Company; and (c) from the General Motors plant in South Gate, California, to points in Arizona, Nevada, Oregon and Utah, located on the rail lines of Southern Pacific Company.

4. Denies each and every allegation of paragraph IV, and particularly denies that section 5(2)(b) of the Interstate Commerce Act (49 U.S.C. sec. 5(2)(b)) is applicable to these proceedings.

(a) For further answer to subparagraph (a) alleges that the Commission, in granting PMT contract carrier operating authority as aforesaid, properly applied the applicable provisions of section 209(b) of the Interstate Commerce Act, as amended August 22, 1957, in Public Law 85-163 (49 U.S.C. sec. 309(b)), which set out the elements of the National Transportation Policy, to be considered by the Commission in a case of this nature, and which now read as follows:

"In determining whether issuance of a permit will be consistent with the public interest and the National Transportation Policy declared in this Act, the Commission shall consider the number of shippers to be served by the applicant, the nature of the service proposed, the effect which granting the permit would have upon the services of the protesting carriers and the effect which denying the permit would have upon the applicant and/or its shipper and the changing character of that shipper's requirements."

[fol. 60] The Commission correctly weighed the shipper's requirements against the effect on protesting rail and motor carriers, as required by the above statutory provisions, and found that there was a need for this service and that the authority granted would not in any degree adversely affect the operations of other carriers, rail or motor, which findings are supported by substantial evidence. The Commission's report indicates that the restriction of service by PMT to rail points served by Southern Pacific Company was intended to and would protect the protesting

motor carriers, as well as the protesting railroads, from competition by PMT. Denies that the Commission under the above language of section 209(b) of the Interstate Commerce Act was obligated in these proceedings to consider the availability of existing authorized motor carrier service to transport the traffic involved but alleges that the Commission, nevertheless, did fully consider such factor in its report.

(b) For further answer to subparagraph (b) alleges that the Commission did impose restrictions on the grant to PMT merely because it was a railroad subsidiary in that it restricted it to transportation to rail points. No finding of special circumstances was required in connection with the Commission's refusal to impose the other restrictions usually imposed on a common carrier by motor vehicle affiliated with a railroad, which plaintiffs urged the Commission to impose, because the Commission properly found that the imposition of such restrictions would convert PMT into a common carrier and would thus constitute restrictions which it was not authorized to impose under the applicable statute. Under section 209(b) of the Interstate Commerce Act (49 U.S.C. sec. 309(b)), as amended by Public Law 85-163 on August 22, 1957, the Commission may impose in a contract carrier permit only "such reasonable terms, conditions and limitations, consistent with the character of the holder as a contract carrier, . . . as may be necessary to assure that the business is that of a contract carrier and within the scope of the permit, . . ."

(c) For further answer to subparagraph (c) alleges that the Commission fully considered (Decision, sheet 29) and correctly applied the policy of section 210 of the Interstate Commerce Act (49 U.S.C. sec. 310) which prohibits the holding by the same person of a common carrier certificate and a contract carrier permit in the same territory, unless the Commission finds that such dual operations are consistent with the public interest and the National Transportation Policy. In the present case the Commission

properly found that the holding of such dual operations was consistent with the public interest in the National Transportation Policy although the Commission's report states that "our approval of the dual operations at this time should not be construed as any waiver of our right to reconsider this issue at any future date should the present facts change so as to bring about an improper competitive situation or result in improper discrimination or preference." This ultimate conclusion is rationally supported by the Commission's subordinate findings, supported by substantial evidence as indicated below. Thus, such subordinate findings are set out in part in the prior report of the entire Commission dated May 8, 1957, in the Sub. No. 34 proceedings, set forth as Appendix A hereto and made a part hereof, and of which the Commission said in the present case:

"The prior report in the Sub. No. 34 proceeding fully discusses the dual operation question and needs little enlargement or repetition. The issue was argued extensively previously and the argument here is not convincing that a different conclusion is warranted."

[fol. 62] In the prior report of May 8, 1957, the Commission said in this connection:

"In other respects, however, we agree with applicant. Chevrolet, unlike other General Motors divisions for reasons satisfactory to it, definitely prefers to use contract carriers. We have no desire to coerce it into any different position or control its decision in any way. Applicant's past satisfactory performance in a dual capacity has been without criticism. These facts plus the fact that it is only serving a single shipper as a contract carrier and would not appear by the grant of authority here considered to be able to do otherwise, the fact that a denial of the instant application would deprive that shipper of a needed service which no other motor carrier is in a position to perform, and the lack of opposition on the part of other carriers, convinces us that we properly may approve the resultant dual operations."

Furthermore, to eliminate any possibility of discrimination or preference from these dual operations the Commission in its report in the instant case imposed an additional restriction, as indicated in the following statement from its report of September 9, 1958:

"Applicant has indicated its willingness to have its outstanding certificates specifically restricted against the transportation of assembled automobiles, trucks and buses. Although there is no evidence which suggests that applicant has ever or is likely to transport such commodities as a common carrier in substituted motor for rail service, to forestall any possibility of discrimination because of the dual operations involved, our grants here will be made subject to the condition that applicant request in writing the imposition of a restriction against the transportation of automobiles and trucks in its outstanding certificates in No. MC 78786 and various subnumbers thereto which are not specifically restricted against such transportation."

(d) For a further answer to subparagraph (d) alleges that the assertion in that subparagraph that the Commission's order "confers an absolute monopoly upon the Railroad and its motor subsidiary between Oakland, South Gate and Raymer, California, and the destination states involved" is inconsistent with the allegations of subparagraph (a) of paragraph IV of the complaint wherein plaintiffs allege "that there is a great amount of existing authorized motor carrier service available to transport the traffic involved."

Second Defense

As a second defense this defendant alleges:

Plaintiffs American Trucking Associations, Inc., The Contract Carrier Conference of American Trucking Associations, Inc., and National Automobile Transporters Association are not engaged in motor carrier or any transportation in competition with PMT or at all and will not be subjected to any legal injury by this order. As the

Commission's report indicates, the other plaintiffs, which are motor carriers, neither individually nor collectively have operating authority to provide truckaway or drive-away service in initial movements from the three assembly plants here involved to the entire destination areas authorized by the Commission's report, and one of them, Kenosha Auto Transport Corp., does not appear to have any authority to serve these three plants of General Motors. Furthermore, as the report shows, the traffic to the points involved is now being handled exclusively by rail and would continue to be transported by rail or by proprietary trucks of General Motors Corporation or by another independent trucking company, other than plaintiffs, even if the order authorizing PMT to conduct these operations were set aside so that this order does not injure plaintiff truckers competitively and so that the setting aside of this order would not benefit them. Consequently, none of the plaintiffs has any standing to bring this suit.

Third Defense

As a third defense this defendant alleges:

No interlocutory injunction should be granted because: (a) on the basis of the plaintiffs' complaint and this answer, plaintiffs have totally failed to establish even a prima facie case as to the invalidity of the Commission's [fol. 64] order; (b) the balance of convenience of the parties is clearly in favor of denying such relief, in that granting of an interlocutory injunction as the Commission's report indicates, would deprive PMT of the substantial revenues from the transportation authorized in this order and would deprive General Motors of service by PMT which the Commission has found as needed, whereas denial of an interlocutory injunction would not cause any of this traffic to be diverted to plaintiffs or otherwise benefit them; and (c) plaintiffs are not subjected to irreparable, or any injury by the order, as Judge Keech apparently decided in issuing an order on October 8, 1958, denying plaintiffs a temporary restraining order.

Wherefore, defendant prays that no interlocutory injunction be entered and that the complaint be dismissed, with costs charged to plaintiffs.

Dated this 22nd day of October, 1958.

Respectfully submitted,

Robert L. Pierce, William Meinhold, Edward M. Reidy, Thormund A. Miller, Attorneys for Pacific Motor Trucking Company, Intervenor.

CERTIFICATE OF SERVICE (omitted in printing).

[fol. 65]

APPENDIX "A" TO ANSWER
INTERSTATE COMMERCE COMMISSION

No. MC-78787 (Sub-No. 34)

PACIFIC MOTOR TRUCKING COMPANY EXTENSION—OREGON

Decided May 8, 1957

1. Operation by applicant as a contract carrier by motor vehicle of automobiles and trucks in initial movements, in truckaway service, from a specified plant site in Oakland, Calif., to described points in Oregon, over irregular routes, found consistent with the public interest and the national transportation policy.
2. Holding by applicant of a permit as authorized herein and those previously issued, and of certificates heretofore issued, found consistent with the public interest and the national transportation policy.

3. Issuance of a permit approved upon compliance by applicant with certain conditions, and application in all other respects denied.

William Meinhold and Stanfield Johnson for applicant.

John G. Lyons and Phil Jacobson for protestants and interveners in opposition to the application.

REPORT OF THE COMMISSION ON ORAL ARGUMENT

BY THE COMMISSION :

No exceptions were filed to the order recommended by the joint board, but it was stayed by order of Division 1. The parties have been heard in oral argument with respect to the dual operations issue arising under section 210 of the Interstate Commerce Act. Our conclusions differ slightly from those recommended.

By application filed October 14, 1955, as amended, Pacific Motor Trucking Company, a corporation, of San Francisco, Calif., seeks a permit authorizing operation, in interstate or foreign commerce, as a contract carrier by [fol. 66] motor vehicle, of new Chevrolet automobiles, new Chevrolet trucks, and new Chevrolet buses, in initial movements, in truckaway service, from the sites of Chevrolet Plants Nos. 1 and 2, in Oakland, Calif., to points in Oregon which are stations on the lines of the Southern Pacific Company, over irregular routes. Insured Transporters, Inc., intervened as its interests might appear, and certain other motor common carriers made representations at the oral argument on the dual operations issue.

Applicant is a wholly-owned subsidiary of the Southern Pacific Company. It presently holds various certificates issued by this Commission authorizing extensive operations as a motor common carrier between points in California, Oregon, Nevada, Arizona, New Mexico, and Texas, generally over regular routes, in the transportation of general commodities, with exceptions; and it also holds permits authorizing operations as a contract carrier by motor vehicle of new automobiles, new trucks, and new buses, in initial movements, in driveaway and truckaway service (1) from Oakland to Hawthorne, Carson City, and

Minden, Nev., and points in Nevada which are stations on the rail lines of the Southern Pacific Company, (2) from Raymer, Calif., to points in the Los Angeles Harbor commercial zone, and (3) between Los Angeles and Calexico and San Ysidro, Calif. All of its contract carrier operations are performed for the Chevrolet Division of General Motors Corporation. On June 29, 1955, it was granted temporary authority to transport new automobiles, new trucks, and new buses, in initial movements, by the truck [fol. 67] away and driveaway methods, from Oakland to points in Oregon which are stations on the lines of the Southern Pacific Company, over irregular routes, but as of the date of the hearing herein in January 1956, it had not utilized such authority. Such temporary authority, which is substantially co-extensive with the permanent authority here sought, is now conditioned to expire upon final determination of the instant application.

The board recommended that applicant be granted a permit authorizing operation as a contract carrier by motor vehicle of new automobiles, new trucks, and new buses, in initial movements, in truckaway service, from Oakland to points in Oregon which are stations on the rail lines of the Southern Pacific Company, over irregular routes, restricted to vehicles bearing the trade name "Chevrolet". The board also found that the holding by applicant of such a permit and its holding of a certificate authorizing common carrier operations in the same territory would be consistent with the public interest and the national transportation policy.

No exception is taken to the board's statement of facts, and we adopt it as our own except to the extent some modification or enlargement thereon appears necessary or desirable for a discussion of the issues presented.

Division 1 stayed the taking effect of the order recommended by the board in order to give consideration to the propriety of the restriction mentioned above, namely that limiting the service to be performed to the transportation of vehicles bearing the name "Chevrolet" and thereafter the proceeding was assigned for oral argument on the dual operations issue.

[fol. 68] General Motors operates two assembly plants in Oakland. One, the so-called Plant No. 1, assembles only Chevrolet automobiles. At Plant No. 2, however, there are assembled Chevrolet trucks and buses and also GMC trucks. Chevrolet trucks coming off the assembly line and destined for movement by applicant are driven to applicant's yard, which is adjacent to Plant No. 1. GMC trucks coming off the assembly line are driven to the GMC yard adjacent to Plant No. 2. The GMC trucks to be delivered by motor vehicle are handled exclusively by intervener Insured Transporters, Inc., and this carrier is apprehensive that if the instant application is granted, without a restriction such as that recommended by the board, it may lose some of its business to applicant. Chevrolet ships its trucks along with shipments of automobiles, and it is necessary that any carrier utilized to transport automobiles be in a position to handle both types of vehicles. Insured is not authorized to transport automobiles and hence its service would be of little use for the combined movement of Chevrolet trucks and automobiles.

In our opinion, commodity descriptions couched in terms of trade names are objectionable under any circumstances. The desired result may be otherwise obtained, however, (1) by restricting the transportation of trucks to those in mixed shipments with automobiles, or (2) by limiting the service to shipments from the site of Plant No. 1. It is possible that occasions might arise when Chevrolet would desire to ship a straight load of trucks, and hence the restriction to the site of Plant No. 1 appears to be preferable.

[fol. 69] The record is silent concerning the proposed movement of buses, and, in fact, shipper's representative indicated an interest in the proposed service only insofar as automobiles and trucks are concerned. Additionally, the service is to be performed only by the truckaway method, and there is no showing that the equipment to be utilized is capable of handling assembled buses. In the circumstances, and except for the provisions of section 210 of the act hereafter discussed, the record establishes a need on the part of the supporting shipper for the transportation of new automobiles and new trucks, in initial movements, from the site of General Motors' Plant No. 1, in Oakland,

to points in Oregon on the lines of the Southern Pacific Company.

There remains the question of the propriety of granting applicant a permit authorizing operations of the scope indicated above while, at the same time, it also holds a certificate authorizing common-carrier operations in the same territory. Further, there is also a question as to whether we should grant such a permit in view of the extensive common carrier rail service now provided in the territory by applicant's parent corporation, the Southern Pacific Company. True, the provisions of section 210 of the act are applicable only to instances involving the holding of certificates and permits authorizing the transportation of property by motor vehicle, but even without the statutory requirements, we would be remiss in our duty were we to ignore the dual relationship between applicant, as a contract carrier by motor vehicle, and the Southern Pacific Company, as a common carrier by rail. [fol. 70] We may inquire into the relationship incidental to the statutory findings necessary under section 209 of the act and in a proper case withhold a grant of authority or impose restrictions necessary to guard against the possibility of practices at which section 210 is aimed.

Insofar as concerns dual operations by applicant as a common carrier and as a contract carrier by motor vehicle, the contract-carrier operations here considered are not competitive with the common-carrier operations now conducted or authorized. Most of the common-carrier authority held by applicant is restricted against the transportation of automobiles and trucks, either specifically, or in the form of a restriction against the transportation of commodities requiring special equipment. The latter restriction would not preclude the movement of a single car or truck on a unit of conventional equipment, but that type of movement is not practicable for an operation of the nature here considered, and the restriction operates as a bar to the use of the specialized equipment here contemplated to be used. Actually, applicant has never transported an automobile or a truck under its common-carrier authority, and it expresses a willingness to have any appropriate limitation imposed upon such authority to pre-

vent it from so doing. Although the common-carrier and contract-carrier operations are not competitive, the granting of authority which would permit applicant to serve the same shipper, either at the same plant or at any other point, both as a contract carrier of automobiles and trucks and as a common carrier of general freight, nevertheless requires careful scrutiny and special justification. The relationship between applicant and the railroad clearly [fol. 71] opens the door for violation of the principles underlying section 210, even though not specifically covered by the statute. The granting of the instant application would permit the Southern Pacific Company to serve the same shipper, General Motors, both as a contract carrier by motor vehicle and as a common carrier both by rail and motor of general freight.

In defense of its position that such dual operations described above are not inconsistent with the public interest and the national transportation policy, applicant points out that the present situation has prevailed for many years, it having commenced its contract-carrier service for Chevrolet in 1935, in intrastate commerce; that at no time has any person, carrier or otherwise, charged it with any of the practices which section 210 is designed to prohibit; that the situation which would result from a grant of authority to extend its contract-carrier operations into Oregon is in no way different from that prevailing in California and Nevada at the time its previous dual operations were approved; and that the situation, for all practical purposes is no different from that which has prevailed in the movement of California intrastate traffic for over 20 years, with the approval of the regulatory Commission of that State. It further urges that it has expended large sums of money for equipment and other facilities in reliance upon the approval which we have heretofore granted in respect of dual operations and in respect of the grant of temporary authority which we made for contract-carrier operation of the scope here involved as far back as June, 1955. It points [fol. 72] out that the provisions of section 210 are not absolutely prohibitive of dual operations and that the history of the statute indicates an intent that dual operations shall be approved in meritorious cases.

Applicant's plea that it has relied upon our past approval of specific dual operations, we think, is without merit. Each successive grant of common or contract carrier authority which would result in dual operations must, under the statute, be accompanied by a finding that such resultant dual operations will be consistent with the public interest and the national transportation policy. Each such finding must be based upon the circumstances existing at the time the particular grant is made and each case must be decided on its own merits. Certainly, the express provisions of the act place applicant on notice that it should not rely upon a grant of temporary authority to foreshadow a subsequent grant of corresponding permanent authority.

In other respects however, we agree with applicant. Chevrolet, unlike other General Motors divisions for reasons satisfactory to it, definitely prefers to use contract carriers. We have no desire to coerce it into any different position or control its decision in any way. Applicant's past satisfactory performance in a dual capacity has been without criticism. These facts plus the fact that it is only serving a single shipper as a contract carrier and would not appear by the grant of authority here considered to be able to do otherwise, the fact that a denial of the instant application would deprive that shipper of a needed service [fol. 73] which no other motor carrier is in a position to perform, and the lack of opposition on the part of other carriers, convinces us that we properly may approve the resultant dual operations.

We find that operation by applicant in interstate or foreign commerce, as a contract carrier by motor vehicle of automobiles and trucks, in initial movements, in truck-away service, from the site of General Motors Corporation's Plant No. 1, at Oakland, Calif., to points in Oregon which are stations on the lines of the Southern Pacific Company, over irregular routes, will be consistent with the public interest and the national transportation policy; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and our rules and regulations thereunder; that a permit authorizing such service should be

granted; and that in all other respects the application should be denied.

We further find that the holding by applicant of the permit granted herein and those heretofore issued, and of the certificates heretofore issued to it authorizing common-carrier operations in the same territory, will be consistent with the public interest and the national transportation policy.

Upon compliance by applicant with the requirements of sections 215 and 218 of the act, with our rules and regulations thereunder, and with the requirements established in [fol. 74] *Contracts of Contract Carriers* 1 M.C.C. 628, an appropriate permit will be issued. An order will be entered denying the application except to the extent granted.

WALRATH, Commissioner, dissenting:

I am not in agreement with the conclusions of the report in respect of dual operations. Approval of the holding of a certificate and a permit by applicant may be made only upon a showing of good cause under the language of section 210 of the Act. In my opinion, the record does not present any basis for finding that the dual operations, which would result from a grant of contract carrier authority, will be consistent with the public interest and with the national transportation policy. Rather, it forces me to a contrary conclusion. The prohibition against dualism in carrier operations was clearly designed to prevent the possibility of undue preference and unjust discrimination. While the statute speaks only of motor carrier operations, here we are faced with approving the issuance of a contract carrier permit to a certificated common carrier which is completely controlled by a rail carrier. Notwithstanding past performances in a dual capacity, without complaint or charge of discriminatory practices, the authorization of additional contract carriage by applicant will compound a situation already fraught with the peril which the prohibition was intended to prevent. Surely, the ability to serve a shipper in connection with its unquestionably extensive volume of inbound general freight traffic as a rail carrier and as a motor common carrier, as well as to

provide service on the outbound traffic of automobiles and trucks both as a rail carrier and a motor contract carrier, places such a carrier in a peculiarly advantageous position to favor the shipper, even where the motor contract carrier [fol. 75] service is limited to points which are stations on the principal's rail lines. Thus, the possibility of preferential and discriminatory practices far outweighs the recognition in this case of the preference of a single shipper and the other reasons mentioned in the report as justifying a finding that good cause exists for approving applicant's operating as both a common and contract carrier within the same territory.

McPHERSON, *Commissioner*, dissenting:

I do not agree with the statement in this report that applicant is unable to transport automobiles under its general commodity operating authority. See *L. C. Jones Trucking Co. Extension—The Dakotas*, 62 M.C.C. 539. Applicant, under the grant herein, will, therefore, be able to transport automobiles as both a common carrier and a contract carrier. The Southern Pacific Company, of which applicant is a wholly-owned subsidiary, may transport automobiles in rail service. In view of these facts, I believe that all will agree that a very serious question is presented with respect to the extent to which operations contemplated by Section 210 of the Act will be authorized.

I agree that in general each situation in which dual operations are involved must be considered on its own merits, and I am considerably impressed by the fact that no instances of discrimination or other improper practices with respect to the parties or operations here involved have been brought to our attention, but I do not believe that approval of the dual operations which would result here can be based on the absence of criticism with respect to [fol. 76] past operations. Although applicant may be able to serve only one automobile and truck manufacturer as a contract carrier, it is able to serve several others as a common carrier, in the same general territory and on the same as well as different commodities. The opportunities for indulging in unfair or discriminatory practices are

very great. The mere possibility is usually sufficient to be a bar to approval of dual operations. See *C. A. Conklin Truck Line, Inc., Dual Operations*, 44 M.C.C. 463. In the circumstances, I am unable to find the good cause which the Act requires before we may approve dual operation and, therefore, I feel compelled to deny the application.

Commissioners Freas, Winchell, and Murphy did not participate in the disposition of this proceeding.

[fol. 77]

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 8th day of May, A. D. 1957.

No. MC-78787 (Sub-No. 34)

PACIFIC MOTOR TRUCKING COMPANY EXTENSION—OREGON

Investigation of the matters and things involved in this proceeding having been made, and the Commission on the date hereof, having made and filed a report on oral argument herein containing its findings of fact and conclusions thereon, which report is hereby made a part hereof:

It is ordered, That said application, except to the extent granted in said report, be, and it is hereby denied.

By the Commission.

Harold D. McCoy, Secretary.

(Seal)

[fol. 78]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title omitted]

ANSWER OF GENERAL MOTORS CORPORATION, INTERVENING
DEFENDANT—Filed October 27, 1958

General Motors Corporation, intervening defendant in the above-entitled action by order of the court October 8, 1958, for answer to the complaint therein filed states as follows:

First Defense

That the complaint fails to state a claim against the defendants upon which relief can be granted. (5 U.S.C. Sec. 1009)

Second Defense

1. Admits, for the purpose of this action, the allegation [fol. 79] in paragraph I of the complaint, to-wit: jurisdiction; and in further answer to said allegation respectfully says to the court that all the matters and things of which complaint is made, as more fully set forth in paragraph IV of the complaint, are matters and things within the discretion of the Interstate Commerce Commission and this intervening defendant denies that there has been any abuse thereof, or that the Commission has otherwise acted unlawfully, in granting to Pacific Motor Trucking Company, another intervening defendant, a permit authorizing certain motor carrier operations. (49 U.S.C. Sec. 309(b))

2. Admits the identity of party plaintiffs set out in paragraph II of the complaint, but denies that either of said plaintiffs has, or will, suffer a legal wrong, or be adversely affected or aggrieved by the action of the Interstate Commerce Commission. (5 U.S.C. Sec. 1009)

3. Admits the description of proceedings before the Interstate Commerce Commission, set out in paragraph III of the complaint, but respectfully refers the court to Appendix A to the complaint for the exact scope of authority granted by the Interstate Commerce Commission to Pacific Motor Trucking Company, another intervening defendant.

4. Denies the allegations of paragraph IV that the Interstate Commerce Commission exceeded its powers and authority delegated under law in issuing the report and order more fully identified in the next preceding paragraph, [fol. 80] and in further answer respectfully says to the court that the particulars cited by plaintiffs as error do not constitute grounds for review for the following reasons:

This intervening defendant—

(a) Denies the allegation in subparagraph (a) of paragraph IV of the complaint that “there is a great amount of existing authorized motor carrier service available” and that the Commission’s order fails to protect said motor carriers is entitled to no standing under the statute. The availability of service by common carriers is not one of the criteria to be considered in proceedings of this kind. (49 U.S.C. Sec. 309(b));

(b) Denies the allegation in subparagraph (b) of paragraph IV of the complaint that the operations authorized by the Commission are “completely divorced from those of the railroad” (Pacific Motor Trucking Company is a subsidiary of the Southern Pacific Company) and “without evidence of record” to support the grant of such authority. Said allegation is not in accord with the findings of the Commission. (See Appendix A to the complaint at Sheets 25 and 31);

[fol. 81] (c) Denies the allegation in subparagraph (c) of paragraph IV of the complaint that the Commission failed to give effect to those provisions of the statute (49 U.S.C. Sec. 310) designed to preclude dual operations by a common carrier by motor vehicle and a contract carrier by motor vehicle under common

control. The Commission gave specific attention to this phase of the proceedings, had oral argument thereon in which plaintiffs participated, and discussed the question specially in its report. (See Appendix A to the complaint p. 29) Whether such dual operations are consistent with the public interest is a matter delegated to the administrative discretion of the Interstate Commerce Commission by section 310.

(d) Denies the allegation in subparagraph (d) of paragraph IV of the complaint that the Commission's order "promotes monopoly in transportation". Said allegation is inconsistent with the allegation of subparagraph (a) where plaintiffs apprise the court that "there is a great amount of existing authorized motor carrier service available";

(e) Denies the summary allegation of subparagraph [fol. 82] (e) of paragraph IV of the complaint that for the reasons set forth in subparagraphs (a) to (d) the Commission has erred as a matter of law. The reasons set forth in plaintiffs' statement of particulars are answered hereinabove.

Third Defense

1. In further answer, this intervening defendant respectfully states to the court that the matters and things complained of are fully reported by the Commission as shown in Appendix A to the complaint, and that said matters and things are the subject of the Commission's administrative discretion as delegated by the Congress (49 U.S.C. Secs. 5(2)(b), 309(b), 310); that there was no abuse of discretion by the Commission, nor did it act unreasonably, arbitrarily or capriciously, in granting certain operating authority to Pacific Motor Trucking Company; and, finally, that the complaint fails to state that the order of the Commission will visit upon plaintiffs a legal wrong, or that it will adversely affect or aggrieve them, singly or collectively, such as would entitle them to judicial review. (5 U.S.C. Sec. 1009).

2. Each and every allegation in the complaint not herein expressly admitted by this intervening defendant is denied.

Wherefore, this intervening defendant prays to the court [fol. 83] that the prayer for relief sought be denied and that the complaint be dismissed with costs to the plaintiffs.

Dated this 24th day of October, 1958.

Respectfully submitted,

General Motors Corporation, By Its Attorneys:

Henry M. Hogan and Walter R. Frizzell, 3044 West Grand Boulevard, Detroit 2, Michigan;

Beverly S. Simms, 612 Barr Building, 910 Seventeenth Street, N.W., Washington 6, D.C.

CERTIFICATE OF SERVICE (omitted in printing).

[fol. 85]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[File endorsement omitted]

[Title omitted]

ANSWER OF THE UNITED STATES OF AMERICA—
Filed December 1, 1958

The United States of America, defendant in the above-entitled action, in answer to the complaint, says:

I

This is a complaint to set aside an order of the Interstate Commerce Commission. The Interstate Commerce Commission has adequate authority to defend and protect its orders challenged herein.

The Commission will avail itself of the statutory authorization to appear and interpose all possible defenses to plaintiffs' charges and claims, and intervening defendants may present their position through their own counsel.

Under these circumstances, and in view of these facts, the United States does not participate in the defense of the Commission's order, but does not oppose its defense.

James E. Kilday, John C. Danielson, Attorneys, Department of Justice, Washington 25, D. C.;

Victor R. Hansen, Assistant Attorney General;
Oliver Gasch, United States Attorney, District of Columbia, United States Court House, Washington 1, D. C.;

Attorneys for the United States of America.

[fol. 86] CERTIFICATE OF SERVICE (omitted in printing).

[fol. 87] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title omitted]

ANSWER OF DEFENDANT INTERSTATE COMMERCE COMMISSION
—Filed December 3, 1958

The Interstate Commerce Commission (hereinafter called the Commission), one of the defendants in the above entitled action, answers the complaint as follows:

1. Admits the allegations of Paragraph 1.
2. Admits the allegations of Paragraph II, except that it denies that B & H Truckaway, one of the plaintiffs, is a common carrier by motor vehicle, and avers that it is a contract carrier by motor vehicle.
3. Admits the allegations of Paragraph III, except that it denies the allegations in the first subparagraph of Paragraph III as to the destinations sought to be served from the respective origins sought to be served in the application filed by Pacific Motor Trucking Company in Docket No. MC78787 (Sub-No. 37), and for the proper description of such origins and destinations the attention of the Court is respectfully directed to the application in

question, and to Sheet 4 of the Commission's decision of September 9, 1958, attached as Appendix A to the complaint; and denies the characterization of the Commission's report of September 9, 1958, as contained in the second sentence of the third subparagraph of Paragraph III, and for the proper interpretation of that report the Court is respectfully referred to the report itself. For further answer to Paragraph III, the Commission avers that under date of May 8, 1957, it issued a prior report on oral argument in Docket No. MC-78787 (Sub-No. 34), entitled *Pacific Motor Trucking Company Extension—Oregon*, reported in 71 M.C.C. 561, which report of May 8, 1957, was incorporated as a part of the report and order of the Commission of September 9, 1958, under attack by the plaintiffs in this proceeding, but which report of May 8, 1957, was not referred to by the plaintiffs in their complaint.

4. Denies the allegations in Paragraph IV.

5. For further answer to the complaint, the Commission alleges that all of the parties to the proceedings before the Commission were given a full and complete hearing; that the findings and conclusions in the reports and orders attacked in the complaint, as well as the prior report in Docket No. MC-78787 (Sub-No. 34) were and are fully [fol. 89] supported and justified by the evidence submitted in said proceedings; that in making said reports the Commission carefully considered and applied the criteria fixed by law, considered and weighed carefully the National Transportation Policy, considered and weighed carefully, in the light of its own knowledge and experience, each fact, circumstance and condition required by law to be considered, and weighed as well each fact, circumstance and condition called to its attention by the parties to said proceedings by their respective counsel or otherwise; that said reports and orders were not made or entered unreasonably, arbitrarily, capriciously, or in abuse of its discretion; that in making said reports and orders, the Commission did not exceed the authority conferred upon it by law; and, except as expressly admitted in this answer, the

Commission denies each and every allegation contained in the complaint in conflict with the allegations of this paragraph.

Wherefore, having fully answered, the Interstate Commerce Commission, one of the defendants, prays that the relief sought in the complaint be dismissed.

James Y. Piper, Assistant General Counsel, Interstate Commerce Commission, Washington 25, D. C.;

Robert W. Ginnane, General Counsel;

Attorneys for the Interstate Commerce Commission.

[fol. 90] **CERTIFICATE OF SERVICE** (omitted in printing).

[fol. 91] [File endorsement omitted]

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICAN TRUCKING ASSOCIATIONS, INC., THE CONTRACT CARRIER CONFERENCE OF AMERICAN TRUCKING ASSOCIATIONS, INC., NATIONAL AUTOMOBILE TRANSPORTERS ASSOCIATION, CONVOY COMPANY, ROBERTSON TRUCK-A-WAYS, INC., HADLEY AUTO TRANSPORT, B & H TRUCKAWAY, WESTERN AUTO TRANSPORTS, INC., and KENOSHA AUTO TRANSPORT CORP., Plaintiffs,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants,

and

PACIFIC MOTOR TRUCKING COMPANY and GENERAL MOTORS CORPORATION, Intervening Defendants.

OPINION—January 20, 1959

Before Bastian, Circuit Judge, and Keech and Curran,
District Judges, sitting as a statutory three-judge court.

Keech, District Judge:

This is an action by certain motor carrier trade associations and motor carriers to set aside an order of the Interstate Commerce Commission entered September 9, 1958, which directed the issuance, under certain conditions, of motor contract carrier permits under §209(b) of the Interstate Commerce Act [49 U.S.C. §309(b)] authorizing Pacific Motor Trucking Company of San Francisco, California, to transport automobiles and trucks, except trailers, [fol. 92] in initial movements in truckaway and/or driveaway service, from plants of the General Motors Corporation at Oakland, Raymer, and South Gate, California, to certain named off-rail points in Nevada, and to all points in Oregon, Nevada, Utah, Arizona, and New Mexico which are stations on the rail lines of the Southern Pacific Company.

Pacific Motor Trucking Company (hereinafter referred to as PMT) is a wholly owned motor carrier subsidiary of Southern Pacific Company (hereinafter referred to as SP), which operates an extensive railroad system in Oregon, California, Nevada, Utah, Arizona, New Mexico, and Texas.

PMT since December 10, 1935, has held contract carrier operating authority from the Railroad Commission of California for intrastate operations within that State. The Interstate Commerce Commission (hereinafter referred to as the Commission) has issued to PMT four prior contract carrier permits for transportation of new automobiles, new trucks, and new buses, in initial movements in truckaway and driveaway service (1) from Oakland, California, to the non-rail point of Hawthorne, Nevada, and Nevada rail points on the Southern Pacific (MC 78787, Sub 23, issued June 20, 1944); (2) from Los Angeles, California, to Calexico and San Ysidro, California, both on the Mexican border (MC 78787, Sub 27, issued April 21, 1950); (3) from Raymer, California, to points in the Los Angeles

Harbor Commercial Zone, for transshipment by water (MC 78787, Sub 30, issued June 22, 1950); and (4) from Oakland, California, to Carson City and Minden, Nevada, both being non-rail points (MC 78787, Sub 31, issued June 21, 1955). PMT's only shipper under these permits has been GM. Thus, prior to filing of the four new applications in [fol. 93] volved in this case, the Commission had issued to PMT contract carrier operating authority from GM plants in California for physically interstate service across the state line into Nevada, and for foreign commerce physically within California.

The order complained of grew out of extensive proceedings before the Commission following the filing of the four applications by PMT, seeking to extend its service as a contract carrier for GM in the Pacific Coast area for the transportation of a single commodity, new automobiles and trucks. In general, by the Sub 34 application, PMT sought to extend its contract carrier service from the two GM Chevrolet plants at Oakland, California, to all Oregon points which are stations on SP; by the Sub 35 application, the right to serve three additional non-rail points in Nevada from Oakland, California; by the Sub 36 application, to serve all Arizona points which are stations on SP; and by the Sub 37 application, authority to round out its service areas from the Oakland and Raymer plants to include all points in the seven states of Washington, Oregon, Idaho, Nevada, Utah, Arizona, and New Mexico, whether or not they are stations on SP, and to begin new service from the Buick-Oldsmobile-Pontiac plant at South Gate, California, to a seven-state area, namely, Washington, Oregon, Idaho, Nevada, Utah, Arizona, and Montana. The four sub-proceedings were finally consolidated in Sub 37, from which the order complained of emanated. All of the plaintiffs in this action, who had been protestants in one or more of the other sub-numbers, participated in the consolidated proceeding before the Commission.

By the order here under attack, the Commission granted the authority sought in the Sub 35 proceeding, service from the Oakland plant to three additional non-rail points in [fol. 94] Nevada, which had been opposed by only one protestant, not a party to this action; but as to the Sub

34, 36, and 37 applications, the Commission denied entirely the authority requested to serve destinations in states not served by SP (Washington, Idaho, and Montana) and limited the authority granted to destinations in the other states (Arizona, Nevada, Oregon, Utah, and New Mexico) to points located on the rail lines of SP. Thus, the Commission's order granted only a limited portion of the authority sought in the four applications, and issuance of the new permits thereunder was conditioned on curtailment of existing common carrier authority to transport automobiles and trucks.

This action to set aside the Commission's order and for a temporary restraining order and for interlocutory and permanent injunction against issuance of the permits authorized thereby, was brought under the provisions of §205 (g) of the Interstate Commerce Act [49 U.S.C. §305(g)], §10 of the Administrative Procedure Act [5 U.S.C. §1009], and §§ 1336, 1398, 2284, and 2321 to 2325 of the Judicial Code [28 U.S.C. §§ 1336, 1398, 2284, and 2321-2325]. The plaintiffs' motion for a temporary restraining order was denied after hearing. On November 24, 1958, permits for the operations authorized by the order were issued by the Commission. The prayer for injunction was thereafter abandoned, and the cause is now before this statutory three-judge court for a determination on the merits.

The plaintiffs American Trucking Associations, Inc., The Contract Carrier Conference of American Trucking Associations, Inc., and National Automobile Transporters Association are motor carrier trade associations. The plaintiffs Convoy Company, Robertson Truck-A-Ways, Inc., Western Auto Transports, Inc., and Kenosha Auto Trans. [fol. 95] port Corp., are motor common carriers authorized to operate in one or more of the states affected by the extensions of Pacific Motor Trucking Company's contract operations authorized by the order. Robertson holds common carrier authority to transport automobiles and trucks, in initial movements, in truckaway service from the General Motors plants at Raymer and South Gate to points in Arizona, Nevada, and Oregon. The plaintiffs Hadley Auto Transport and B & H Truckaway are motor contract carriers. Hadley is authorized to transport in initial

movements, in truckaway service, automobiles from points in Los Angeles County, California, which includes Raymer and South Gate, to points in Idaho and Montana, and from Oakland to points in Arizona, and automobiles and trucks from points in Los Angeles County to points in Arizona, Nevada, New Mexico, and Utah. B & H is authorized to transport automobiles, in truckaway and driveaway service, in initial movements, from Vernon, California, an incorporated community just outside Los Angeles, to points in Arizona and Nevada, and motor vehicles, except trailers, in initial movements from Vernon to points in Utah, Idaho, Oregon, and Washington, serving Raymer as a point within the Vernon commercial zone.

The United States and the Interstate Commerce Commission were named defendants. The United States was represented at the hearing on the motion for a temporary restraining order, and thereafter an answer was filed on its behalf stating:

"...the United States does not participate in the defense of the Commission's order but does not oppose its defense."

[fol. 96] There has been no further participation by the United States in the proceedings.

Pacific Motor Trucking Company and General Motors Corporation sought leave to intervene on behalf of the defendants. Their requests were granted, PMT, the applicant, and GM, the sole shipper involved, being the parties who would be most affected if the Commission's order should be set aside.

The question presented by this action is, to summarize, whether the Commission erred in authorizing extension of PMT's existing contract carrier authority to serve a single shipper, GM, and to transport a single commodity, new automobiles and trucks, from three GM plants in California to points within five western states which are stations on the rail lines of PMT's parent railroad, SP.

¹ This is of particular significance in view of the fact that the United States on occasion has seen fit to oppose actively orders of the Interstate Commerce Commission.

The plaintiffs challenge the order, contending the Commission erred in the following respects:

- "1. It ignored the provisions of the National Transportation Policy applicable in proceedings of the type under consideration;
- "2. It ignored the mandate of the provist of §5(2)(b) [of the Interstate Commerce Act] which it must observe in cases of this kind except where special circumstances, not here present, justify an exception to the Congressional policy against performance of unrestricted truck service by railroads or their affiliates;
- "3. It failed to follow its own precedent cases and failed to conform to decisions of the Supreme Court applicable to the proceedings under review;
- "4. It failed to conform to the Congressional policy manifested by §210 of the Interstate Commerce Act against dual operations."

Counsel for both sides agree as to the scope of judicial review permitted in such a case as this, namely, that an [fol. 97] order of an independent body such as the Interstate Commerce Commission is not to be disturbed if the order is within the scope of the statute which the Commission is authorized to administer and enforce, and is based upon adequate findings, which are supported by substantial evidence in the record. Counsel also recognize that this is so even though the court should disagree with the Commission's conclusion, since the Act is not rigid and confides broad discretion in the Commission. It is, therefore, the function and duty of this court to determine whether the order here under consideration comes within the prescribed legal limits.

Plaintiffs differ with the defendant Commission and the intervenors, PMT and GM, as to what are the statutory limits of the Commission's authority applicable to granting of contract carrier authority to a motor carrier which is the wholly owned subsidiary of a railway.

The basic statute which governs the issuance of motor contract carrier permits is §209(b) of the Interstate Commerce Act [49 U.S.C. §309(b)], as amended by the Act of August 22, 1957, Pub. 85-163, 71 Stat. 411.² Section 209(b)

² "209(b) Applications for such permits shall be made to the Commission in writing, be verified under oath, and shall be in such form and contain such information and be accompanied by proof of service upon such interested parties as the Commission may, by regulations, require. Subject to section 310 of this title, a permit shall be issued to any qualified applicant therefor authorizing in whole or in part the operations covered by the application, if it appears from the applications or from any hearing held thereon, that the applicant is fit, willing, and able properly to perform the service of a contract carrier by motor vehicle, and to conform to the provisions of this chapter and the lawful requirements, rules, and regulations of the Commission thereunder, and that the proposed operation, to the extent authorized by the permit, will be consistent with the public interest and the national transportation policy declared in the Interstate Commerce Act; otherwise such application shall be denied. In determining whether issuance of a permit will be consistent with the public interest and the national transportation policy declared in this Act, the Commission shall consider the number of shippers to be served by the applicant, the nature of the service proposed, the effect which granting the permit would have upon the services of the protesting carriers and the effect which denying the permit would have upon the applicant and/or its shipper and the changing character of that shipper's requirements. The Commission shall specify in the permit the business of the contract carrier covered thereby and the scope thereof, and it shall attach to it at the time of issuance, and from time to time thereafter, such reasonable terms, conditions, and limitations, consistent with the character of the holder as a contract carrier, including terms, conditions and limitations respecting the person or persons and the number or class thereof for which the contract carrier may perform transportation service, as may be necessary to assure that the business is that of a contract carrier and within the scope of the permit, and to carry out with respect to the operation of such carrier the requirements established by the Commission under section 204(a)(2) and (6); *Provided*, That within the scope of the permit and any terms, conditions or limitations attached thereto, the carrier shall have the right to substitute or add to its equipment and facilities as the development of its business may require: *Provided further*, That no terms, conditions or limitations shall be imposed in any permit issued on or before the effective date of this proviso which shall restrict the right of the carrier to substitute similar contracts within the scope of such permit; or to add contracts within the scope of

in terms provides that issuance of such permits shall be [fol. 98] subject to the limitation on issuance of dual contract and common carrier authority contained in §210 of the Act [49 U.S.C. §310]. Further, the Act must be read as a whole and the various sections interpreted and applied in the light of the national transportation policy³ and the policy underlying §5(2)(b) [49 U.S.C. §5(2)(b)].⁴ It is [fol. 99] not questioned that PMT's past operations for GM, as well as the extended operations authorized by the order, are those of a contract carrier by motor vehicle, as defined by §203(a)(15), as amended August 22, 1957 [49 U.S.C. §303(a)(15)].⁵ Nor is there any question that the

such permit unless upon investigation on its own motion or petition of an interested carrier the Commission shall find that the scope of the additional operations of the carrier is not confined to those of a contract carrier as defined in section 203 (a)(15), as in force on and after the effective date of this proviso."

* ³ "It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy." Act of Sept. 18, 1940, c. 722, Title I, §1, 54 Stat. 899.

⁴ *American Trucking Associations v. United States*, 355 U.S. 141, 151-2 (1957).

⁵ "(15) The term 'contract carrier by motor vehicle' means any person, which engages in transportation by motor vehicle of passengers or property in interstate or foreign commerce, for compensation (other than transportation referred to in paragraph (14) of this section and the exception therein), under continuing contracts

Commission had authority under §209(b) to issue permits for the extended contract carrier operations, unless such permits to PMT, as a subsidiary of SP, were in violation of some other statutory provision.

The plaintiffs admit that there is no express provision prohibiting this grant of authority to PMT, but contend that the grant to a wholly owned motor carrier subsidiary of a railroad of "unrestricted" authority to engage in common carrier operations in competition with independent motor carriers, is contrary to the public interest and national transportation policy as heretofore applied by the Commission and interpreted by decisions of the courts, including the Supreme Court.

The first question which must be resolved is therefore: How is §209(b) to be interpreted in the public interest and in the light of the national transportation policy? Section 209(b) in terms provides:

"... In determining whether issuance of a permit will be consistent with the public interest and the national transportation policy declared in this Act, the Commission shall consider the number of shippers to be served by the applicant, the nature of the service proposed, the effect which granting the permit would have upon the services of the protesting carriers and the effect which denying the permit would have upon the applicant and/or its shipper and the changing character of that shipper's requirements."

The plaintiffs in their brief contended that this amendment of §209(b) "has no bearing on the issues" in the [fol. 100] instant case. During the oral argument counsel for plaintiffs admitted that this amendment of the statute was in effect and binding on the Commission at the time it issued the order complained of, but argued that it had no application to the factual situation involved in the

with one person or a limited number of persons either (a) for the furnishing of transportation services through the assignment of motor vehicles for a continuing period of time to the exclusive use of each person served or (b) for the furnishing of transportation services designed to meet the distinct need of each individual customer."

order here under consideration. Plaintiffs argued that the legislative history of this provision shows that the reason for its adoption was to nullify the decision of the Supreme Court in *United States v. Contract Steel Carriers, Inc.*, 350 U.S. 409, 412, approving the right of contract carriers to seek new business to an extent that the carrier might become a common carrier in fact, remaining a contract carrier in name only. The effect of the court decision was remedied by a second sentence inserted in §209(b) by the 1957 amendment; and whatever may have been the original reason for instituting the legislation which culminated in the 1957 amendment, §209(b), as it read at the time the Commission issued this order, clearly directed consideration by the Commission of certain specific criteria in applying public interest and the national transportation policy to authorization of contract carrier permits.

The order here challenged shows on its fact that the Commission did consider those criteria, making findings with respect to each of them.

As to the number of shippers to be served by the applicant and the nature of the service proposed, the Commission found the evidence established that PMT's sole purpose was to afford GM extended driveaway and truck-away transportation of new cars and trucks from GM's plants at Oakland, Raymer, and South Gate, California, and that PMT's equipment was to be assigned to the exclusive use of that shipper.

As to the effect of granting the permit upon the services of protesting carriers, both ~~rail and motor~~, the Commission made detailed findings as to the amount of GM traffic theretofore handled, or not handled, by the protesting carriers, both rail and motor. Careful consideration was given to the probable loss of GM traffic by rail carriers [fol. 101] in joint-line service with SP, if authority were granted to PMT to serve points beyond SP's line, and the probable loss to a motor carrier presently serving GM dealers in Washington and Alaska, if PMT should be authorized to operate within the State of Washington. The Commission also weighed the effect on other independent motor carriers, both common and contract, authorized to serve any of the areas affected by the proposed extension

of authority. It found that Hadley, one of the two protesting contract carriers, was dedicated to serving Ford, GM's largest competitor, that B & H, the other protesting contract carrier, possessed limited authority for operations from Vernon, California, and had in the past served Studebaker-Packard, and that Robertson, a common carrier protestant, transported vehicles principally for Chrysler.

As to the effect denial of the permit would have upon the applicant and the shipper and the changing character of the shipper's requirements, the Commission found that the shipper, GM, had established its need for extension of the personalized type of contract service which PMT had been rendering it, and rendering well, from other points for many years; that in view of the limited storage facilities maintained by GM at its plants, transportation service must be closely coordinated with plant operations to avoid congestion or delay in deliveries to dealers; that use of any other carrier would require outgoing shipments to be dispatched through the shipper's incoming gate, causing confusion and disarranging the operations at the plant, which are geared to use of PMT's services from its nearby yard. The proposed extension of service was supported by GM in order to obtain faster transportation on shipments requiring expedited handling, direct deliveries to dealers at off-rail points, more flexible and expeditious handling of consolidated shipments, and to meet the competition of other automobile manufacturers, notably [fol. 102] Ford and Chrysler, which have motor services available. The Commission further found that, should the requested authority be denied, GM had indicated it would not use the services of the protesting motor carriers, but either would support an application for similar authority by an independent motor contract carrier presently serving a GM branch plant at Arlington, Texas, or would institute proprietary operations. The order further shows that denial of the permit would cause substantial damage to the applicant, PMT, which has dedicated its contract carrier service to GM operations for many years, acquiring special equipment to meet GM's needs, and that PMT's contract carrier operations for GM during the years 1953

through the first eleven months of 1936 averaged 86.35% of PMT's total contract carrier operations. Thus, although the Commission found an "absence of unusual conditions" which would justify the issuance of permits for service to points not on SP's rail line, there was, in the court's opinion, substantial evidence of special circumstances justifying the extensions of PMT's contract carrier authority to serve GM.

All of the Commission's findings and conclusions are supported by substantial evidence in the record before it.

The plaintiffs contend that any grant of contract carrier authority to a motor carrier subsidiary of a railroad must be limited to operations which are "auxiliary or supplemental" to the rail operations, the test applied by the Commission in permitting unification, merger, or acquisition of control of a motor carrier by a railroad under §5(2)(b); that such authority must be limited further by the five restrictions generally applied by the Commission, in the absence of special circumstances; in granting common carrier authority under §207 to a motor carrier subsidiary of a railroad; and that such authority is subject to the prohibition against dual common and contract carrier authority under §210.

[fol. 103] The Commission denies that the limitations which it has administratively adopted in applying §207 and §5(2)(b) are applicable to the issuance of contract carrier permits under §209, pointing out that it has already been determined in the *American Trucking Association* case, *supra*, 355 U.S. at 149-150, that §5(2)(b) is not a rigid limitation upon issuance of common carrier permits under §207, although the Act is to be read as a whole and the Commission properly considered the underlying policy of §5(2)(b) as a "guiding light" in the exercise of its discretion under §207. The Commission points out further that to apply to a §209(b) contract carrier permit the five restrictions generally placed upon a §207 common carrier certificate in the case of a motor carrier subsidiary of a railroad, would convert the contract carrier into a common carrier, and that the §210 ban on dual operations applies to common and contract carriage by the same motor carrier or affiliated motor carriers, and does not deal with

dual operations by a railway and its motor carrier subsidiary.

The Commission concedes that the rationale which requires a reading of the Act as a whole and consideration of the policy underlying §5(2)(b) as a guiding light in the issuance of §207 common carrier certificates is equally applicable to the granting of §209(b) permits for contract carrier operations. It contends that it did apply, insofar as practicable in dealing with an application for contract carrier authority, the policies underlying §5(2)(b), §207, and §210, as well as the specific criteria laid down by the Congress in its 1957 amendment of §209(b) for determining whether issuance of a contract carrier permit is consistent with the public interest and the national transportation policy.

[fol. 104] That the Commission did apply the Act as a whole, giving effect to the policies underlying §§ 5(2)(b), 207, and 210, as well as carefully following the guide laid down by the Congress in §209(b) for determining public interest and compliance with the national transportation policy, is borne out not only by the findings of fact recited in the Commission's order, but by its conclusions as to the scope of extended operations which would be in the public interest, and by the curtailed authority which the [fol. 105] Commission granted.⁶ It will be observed that

⁶ "We deem it of controlling significance here that in the territory under consideration automobiles are commodities which can be economically and advantageously transported by rail to on-rail points, and that the nature of the movements from these three California plants is such as to render it unlikely that a significant amount of freight would be diverted from Southern Pacific to its motor contract carrier subsidiary if the proposed service were limited to Southern Pacific points. It does not appear that the amount of traffic likely to be diverted under these conditions would be large enough to afford either Southern Pacific or applicant an unfair competitive advantage over other carriers or to constitute a destructive competitive threat to other automobile producers. On the other hand, use by General Motors of applicant's proposed service on a Statewide basis would permit Southern Pacific to invade the territory served by other rail lines and by the existing motor carriers and would inevitably result in the diversion of a large percentage if not all of the traffic now moving in rail joint-line service. Such eventuality has in no way been justified and the public interest in forestalling it is apparent. Insofar as Southern Pacific points are concerned, the authority

the requested authority was denied where it would encroach upon existing service by other carriers, and granted where the evidence of record showed that the proposed extension would have little or no effect upon present and future operations of the protestants.

True, the authority granted PMT by the Commission's order was not subject to all five of the restrictions which the Commission has generally, in the absence of special circumstances, seen fit to impose on *common* carrier certificates to motor carriers which are railway affiliates. The extended operations authorized, however—far from being "unrestricted" operations by PMT in the contract carrier field, as the plaintiffs have consistently referred to them—were restricted in many respects. The authority granted was limited to points already served by SP (so as not to affect adversely other railroads carrying GM traffic beyond SP to other rail points), and limited to points on the rail line of SP (so as not to cut in on territory which potentially might be served by independent motor carrier protestants), subject to the condition that "the permits authorizing such operations should be issued upon receipt of a written request from applicant for the imposition of a restriction against the transportation of automobiles and trucks" in its outstanding common carrier certificates (in the interest of avoiding the possibility of dual motor carrier operations), and the further condition "that there may from time to time in the future be attached to the permits granted such reasonable terms, conditions and limitations as the public interest and national transportation policy may require."

sought represents no more than a request by Southern Pacific to perform truck transportation, albeit contract-carrier transportation, to the same points it serves as a rail carrier. . . . it is clear that all of the traffic except that moving on government bills of lading is now originated by Southern Pacific, and that regardless of whether the Sub 37 application is granted or denied, as concerns rail points of the Southern Pacific, there will be little or no diversion to the existing independent motor operators. In other words, a grant of authority to applicant to serve only those points which are stations on the lines of Southern Pacific should not result in any appreciable alteration of the existing competitive situation and should not unduly restrain competition or in any degree adversely affect the operations of other carriers." (I.C.C. Order, Sheets 23-25.)

The court finds that the Commission's order violates no statutory prohibition, either in letter or in spirit, and that the authority granted thereby to PMT is in the public interest and in keeping with the national transportation policy, affording the shipper adequate, economical, and efficient service in a specialized field, and at the same time effecting no encroachment on the operations of other carriers or transportation media. Thus, the court finds without merit plaintiffs' allegations of error numbered 1, 2, and 4.

As to the plaintiffs' third allegation of error, that the Commission failed to follow its own precedent cases and failed to conform to decisions of the Supreme Court applicable to the proceedings under review, the plaintiffs have pointed to no case determinative of the particular question here involved. Most of the cases cited deal with orders under §5(2)(b) or §207 and administrative practice in interpreting and applying those sections. At the argument, plaintiffs relied principally on the Supreme Court's decisions in *United States v. Rock Island Motor Transit Company*, 340 U.S. 419 (1951), and *American Trucking Associations, Inc. v. United States*, 355 U.S. 141 (1957), affirming 144 F. Supp. 365. In both cases the Supreme Court upheld the Commission's administrative interpretation and application of §207 in the light of the policies underlying the Interstate Commerce Act as a whole and the national transportation policy. In the *Rock Island* case, the Court approved the Commission's imposition of five restrictions administratively adopted to insure that common carrier operations by a railway affiliate under a §207 certificate would be "auxiliary and supplemental" to the rail operations in the absence of special circumstances justifying broader authority in the public interest, holding that the modification was authorized by the Commission's reservation, in the original §207 certificate, of power to impose such further restrictions as subsequently might appear [fol. 107] necessary. In the *American Trucking Associations* case the Court merely held that the Commission, in granting a §207 common carrier certificate, had correctly given consideration to the policy underlying §5(2)(b), although the latter section did not constitute a rigid

limitation on §207 certificates. The court finds the Commission's order in the instant case in harmony with the rulings in those cases.

For the foregoing reasons, the court concludes that the Commission in authorizing the extended operations by PMT acted within the limits of its statutory authority and did not exercise its discretion arbitrarily or capriciously; hence, the Commission's order must be upheld on the merits.

The intervenors have raised a further question, namely, the standing of the plaintiffs to bring this action. The intervenors contend that the complaint shows upon its face that none of the association plaintiffs is a "party in interest" authorized by §205(g) of the Interstate Commerce Act [49 U.S.C. §305(g)] to seek judicial review, or the equivalent "person suffering legal wrong because of any agency action" within §10 of the Administrative Procedure Act [5 U.S.C. §1009] and, further, that the complaint fails to include any allegation and there is an absence of proof that the motor carrier plaintiffs have suffered or are threatened with damage or financial injury as the result of the Commission's order, so as to make them parties in interest entitled to bring suit. The intervenors urge that neither mere concern for obedience to law nor the mere possibility of stronger competition by virtue of the grant of new operating authority is sufficient to give the plaintiffs standing to bring this action to set aside the Commission's order, and that to constitute a "party in interest" under §205(g) a plaintiff must show that some definite legal right possessed [fol. 108] by him has been directly damaged or seriously threatened by the order. *Atchison, Topeka, and Santa Fe Railway Co. v. United States*, 130 F. Supp. 76, affirmed *per curiam* 350 U.S. 892 (1955). They point out further that the fact that the plaintiffs were permitted to intervene before the Commission does not alone furnish a basis for plaintiffs' required "interest". *Pittsburgh & W. Va. Ry. Co. v. United States*, 281 U.S. 479 (1930).

The defendant Interstate Commerce Commission did not raise the issue of standing, and the question was argued by the intervenors after the court had heard the case on the merits.

A majority of the court find that the association plaintiffs obviously are not persons possessed of some legal right directly and adversely affected by the administrative action, entitling them to bring an action to set aside the Commission's order. The majority further find that, not only is the complaint devoid of any allegation of direct injury, present or threatened, to the motor carrier plaintiffs by granting of the extension of operating authority to PMT, but, at the hearing on the merits, there was no showing of actual or anticipated direct injury such as would entitle them to institute this action. Had the complaint been filed by some qualified "party in interest," all of the plaintiffs would have had the right to intervene under the provisions of 28 U.S.C. §2323; but the right to intervene presupposes the existence of an action brought by a proper plaintiff. Since none of the plaintiffs has [fol. 109] alleged or shown standing to bring the action under the statutes providing for judicial review of the Commission's orders, it is the view of Judges Keech and Curran that the complaint must be dismissed on the further ground that plaintiffs lack standing to sue.

Judge Bastian concurs in so much of this opinion as deals with dismissal of the complaint on the merits.

Counsel will present an appropriate order dismissing the complaint (1) on the merits and (2) for lack of standing to sue.

Walter M. Bastian, Circuit Judge.

Richmond B. Keech, District Judge.

Edward M. Curran, District Judge.

January 20, 1959.

28 U.S.C. §2323, third paragraph:

"Communities, associations, corporations, firms, and individuals interested in the controversy or question before the Commission, or in any action commenced under the aforesaid sections [section 2321 of Title 28 and sections 20, 23, and 43 of Title 49] may intervene in said action at any time after commencement thereof."

[fol. 110]

[File endorsement omitted].

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

Civil Action No. 2534-58

AMERICAN TRUCKING ASSOCIATIONS, INC., THE CONTRACT CARRIER CONFERENCE OF AMERICAN TRUCKING ASSOCIATIONS, INC., NATIONAL AUTOMOBILE TRANSPORTERS ASSOCIATION, CONVOY COMPANY, ROBERTSON TRUCK-A-WAYS, INC., HADLEY AUTO TRANSPORT, B & H TRUCKAWAY, WESTERN AUTO TRANSPORTS, INC., and KENOSHA AUTO TRANSPORT CORP., Plaintiffs,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants,

and

PACIFIC MOTOR TRUCKING COMPANY and GENERAL MOTORS CORPORATION, Intervening Defendants.

JUDGMENT—January 30, 1959

The above-entitled cause came on for hearing before this statutory three-judge District Court on December 10, 1958, and the court having considered the pleadings, briefs, and oral argument on behalf of the parties, and having filed on January 20, 1959, its opinion on the issues presented,

It is hereby ordered, adjudged and decreed, that the complaint of the plaintiffs be, and it is hereby, dismissed (1) on the merits, and (2) for lack of standing of the plaintiffs, or any of them, to bring this action; and the clerk is hereby directed to enter judgment for the defendants and inter-

[fol. 111] vening defendants, this 30th day of January, 1959.

Walter M. Bastian, Circuit Judge.

Richmond B. Keech, District Judge.

Edward M. Curran, District Judge.

Approved as to form:

Peter T. Beardsley, Larry A. Eskilsen, Attorneys for plaintiffs.

[fol. 112] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

Civil Action No. 2534-58

AMERICAN TRUCKING ASSOCIATIONS, INC., THE CONTRACT CARRIER CONFERENCE OF AMERICAN TRUCKING ASSOCIATIONS, INC., NATIONAL AUTOMOBILE TRANSPORTERS ASSOCIATION, CONVOY COMPANY, ROBERTSON TRUCK-A-WAYS, INC., HADLEY AUTO TRANSPORT, B & H TRUCKAWAY, WESTERN AUTO TRANSPORTS, INC., and KENOSHA AUTO TRANSPORT CORP., Plaintiffs,

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants,

and

PACIFIC MOTOR TRUCKING COMPANY and GENERAL MOTORS CORPORATION, Intervening Defendants.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed March 27, 1959

I

Notice is hereby given that American Trucking Associations, Inc., The Contract Carrier Conference of American

Trucking Associations, Inc., National Automobile Transporters Association, Convoy Co., Robertson Truck-A-Ways, Inc., Hadley Auto Transport, B & H Truckaway, Western Auto Transports, Inc., and Kenosha Auto Transport Corp., the plaintiffs above named, hereby appeal to the Supreme Court of the United States from the final judgment dismissing the complaint entered in this action on January 30, 1959.

This appeal is taken pursuant to 28 U. S. C. A. §1253.

[fol. 113]

II

The Clerk will please prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

(a) Complaint, filed October 7, 1958, including Appendix A, the report and order of the Commission dated September 9, 1958;

(b) Answer of United States, dated December 1, 1958;

(c) Answer of Interstate Commerce Commission, dated December 2, 1958;

(d) Motion for Leave to Intervene and Order Permitting Intervention of Pacific Motor Trucking Co., dated October 8, 1958;

(e) Motion for Leave to Intervene and Order Permitting Intervention of General Motors Corporation, dated October 8, 1958;

(f) Answer of Pacific Motor Trucking Co., dated October 22, 1958, including Appendix A, the report and order of the Commission dated May 8, 1957;

(g) Answer of General Motors Corporation, dated October 24, 1958;

(h) Opinion, dated January 20, 1959;

(i) Judgment, entered January 30, 1959;

(j) Transcript of testimony, and exhibits, before the Interstate Commerce Commission in Docket No. MC-78787

(Sub-Nos. 34, 35, 36 and 37) (Exhibits 1, 2, 3a, 3b and 4 in the District Court);

(k) This notice of appeal.

III

The questions presented by this appeal are:

1. Whether the Interstate Commerce Commission, in the absence of "special circumstances" such as those disclosed in *American Trucking Associations, Inc. et al. v. U. S. et al.*, 355 U. S. 141, may authorize a wholly-owned railroad subsidiary [fol. 114] to conduct completely unrestricted motor contract carrier operations to all points on its parent railroad's lines?

2. Whether the district court correctly found the existence of "special circumstances" justifying the performance of unrestricted motor service by the rail subsidiary, such findings being directly contrary to those of the Commission itself?

3. Whether the Interstate Commerce Commission, without satisfying the requirements of, or observing the policy underlying, §210 of the Interstate Commerce Act, may validly issue a contract carrier permit to a railroad's motor carrier subsidiary under the following circumstances:

a. Where the subsidiary also holds a common carrier certificate authorizing the transportation of closely-related commodities for the same shipper and receivers and within the same territory?

b. Where the parent company engages in transportation of the same commodities as a rail common carrier, for the same shipper and receivers, as well as competing automobile manufacturers and their dealers, within the same territory?

4. Whether the 1957 amendments to the provisions of the Interstate Commerce Act, Part II, dealing with motor contract carriers, were intended to alter the Congressional policy against rail entry into the motor carrier field?

5. Whether independent motor carriers, found by the Commission to be "authorized to conduct the proposed operations" and motor-carrier associations, all of whom were protestants before the Interstate Commerce Commission, have standing to bring suit to set aside its report and order authorizing unrestricted motor service by a rail subsidiary?

Respectfully submitted,

American Trucking Associations, Inc. and its Contract Carrier Conference:

Peter T. Beardsley, 1424 Sixteenth Street, N. W., Washington 6, D. C.;

Charles W. Singer, 1825 Jefferson Place, N. W., Washington, D. C., Attorneys.

National Automobile Transporters Association, Convoy Company, Robertson Truck-A-Ways, Inc., Hadley Auto Transport, B & H Truckaway, Western Auto Transports, Inc., Kenosha Auto Transport Corp.:

Walter N. Bieneman, 2150 Guardian Building, Detroit 26, Michigan;

Larry A. Eskilsen, 1111 E Street, N. W., Washington 4, D. C., Attorneys.

[fol. 115] CERTIFICATE OF SERVICE (omitted in printing).

[fol. 117] Clerk's Certificate to foregoing transcript (omitted in printing):

SUPREME COURT OF THE UNITED STATES

No. 74—October Term, 1959

AMERICAN TRUCKING ASSOCIATION, INC., et al., Appellants,

vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE
COMMISSION, et al.

ORDER NOTING PROBABLE JURISDICTION—October 12, 1959

Appeal from the United States District Court for the
District of Columbia

The statement of jurisdiction in this case having been
submitted and considered by the Court, probable jurisdic-
tion is noted.

October 12, 1959

[fol. 121]

Plaintiff's Exhibit 1**BEFORE THE INTERSTATE COMMERCE COMMISSION****Docket No. MC-78787****(Sub. 34)****In the Matter of****APPLICATION OF PACIFIC MOTOR TRUCKING COMPANY, 65 Market Street, San Francisco, California, Contract Carrier, Irregular Routes.****Transcript of Hearing—January 18, 1956****Conference Room,
Room 226, Old Mint Building,
Fifth and Mission Streets,
San Francisco, California.****Met, pursuant to notice, at 9:30 a.m.****BEFORE:****JOINT BOARD NO. 11—PERRY O. DELAP, Supervisor
Motor Permits, for Public Utilities
Commissioner of Oregon.****Also present: F. ROY LINN, Examiner, Interstate Commerce Commission.**

.

[fol. 122] O. D. ETZEL was sworn and testified as follows:**Direct examination.****By Mr. DeLap:****Q. Will you state your name, please?****A. My name is O. D. Etzel, E-t-z-e-l.****Mr. Meinhold: Excuse me, do you have a copy of that exhibit?**

The Witness: Yes, sir.

By Mr. Meinhold:

Q. What is your business address, Mr. Etzel?

A. My business address is 65 Market Street, San Francisco, California.

[fol. 123] Q. You prepared a statement setting forth your qualifications and your proposed testimony in this proceeding?

A. Yes, I have; and I have just passed a copy of that to the Board as a part of the record.

Q. Will you please read the statement?

A. (Reading) "I am employed by Pacific Motor Trucking Company in the office of its Vice President as Executive Assistant. I have been employed by Pacific Motor Trucking Company in various capacities since its incorporation in 1933.

[fol. 124] Pacific Motor Trucking Company is authorized [fol. 125] by certificate of Public Convenience and Necessity issued in Docket No. MC-78786 by the Interstate Commerce Commission to operate as a common carrier between Oakland and Ashland, Oregon, and between Ashland and certain other Oregon points which are stations on line of Southern Pacific Company, as set forth in Appendix D attached to this application.

a Rights set forth in item No. 13 of said certificate sets forth the only service Pacific Motor Trucking Company is authorized to perform between Oakland, California, and Ashland, Oregon, as a certified common carrier.

It authorizes transportation of general commodities, except those of unusual value, class A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading.

As a contract carrier we propose to transport in initial movement new automobiles, trucks and buses in special equipment.

We have been advised by the Director of Bureau of Motor Carriers that it is the informal opinion of the Commission,

Division 5, that Pacific Motor Trucking Company is not authorized in the certificate referred to, to use special automobile equipment for transportation of automobiles.

In the event the Commission should find that operations authorized in such certificate and those proposed in instant [fol. 126] application would result in a dual service not consistent with the public interest and with the national transportation policy, it would be our purpose if the Commission so required to seek modification of present certificate of public convenience and necessity so as to be relieved of obligation to act as a certificated common carrier of automobiles from Oakland to points in Oregon served by Southern Pacific Company."

Q. Mr. Etzel, do you know how many units of auto transport equipment Pacific Motor Trucking Company has at the present time?

A. Yes, sir. Pacific Motor Trucking Company owns 352 units of special equipment designed for the transportation of automobiles.

107, approximately 107 units of that equipment is assigned at Southgate and 61 units, approximately, are assigned at Melrose, that is, assigned to the service provided for Chevrolet Division, General Motors Corporation, at Oakland, California.

[fol. 127] GEORGE D. CROX, was sworn and testified as follows:

Direct examination.

By Mr. Meinhold:

Q. Will you please state your full name for the record, Mr. Cron?

A. George D. Cron, C-r-o-n.

Q. And what is your business address?

A. 69th and Foothill Boulevard, Chevrolet Plant, Oakland.

Q. And what is your occupation?

A. Traffic Manager.

Q. That is, Traffic Manager of Chevrolet Oakland Division, General Motors Corporation?

A. That is correct, and Fisher Body, Oakland.

Q. Yes.

A. Also.

Q. How long have you occupied that position?

A. I have been with the corporation in Oakland for 34 years and have held the Traffic Manager's job for the past 30 years.

Q. And as Traffic Manager, do you have charge of all the transportation requirements of your plant?

A. I do.

Q. Reference has been made to Plants No. 1 and 2. What activities are conducted at those plants?

A. Well, at plant 1 we produce only passenger models; at plant No. 2 all commercial vehicles are produced, at plant No. 2, commonly known for the record as 10910 East 14th.

Q. That is Plant No. 2?

A. That's right.

Q. By "Commercial automobiles" you mean trucks as they are properly known?

A. That is correct.

Q. Do you ship from those plants the assembled passenger automobiles and trucks to various places in the Western United States?

A. We do.

Q. Into what states do you make those shipments?

[fol. 129] A. Oregon, Washington, Idaho, Utah, Nevada.

Q. What transportation agencies do you use, that is, do you use rail and trucks?

A. We use truck in the State of California, and rail interstate, except for Nevada, which we use truck into Reno and Minden, Nevada, Carson City.

Q. Yes. On the shipments into Nevada, what trucking company are you using?

A. Pacific Motor Trucking.

Q. Is that a contract operation?

A. Right.

Q. How are you presently shipping your automobiles into Oregon?

A. By rail.

Q. That is by Southern Pacific Company?

A. By Southern Pacific Company, yes, sir.

Q. Can you give us some idea of the approximate volume of your shipments into Oregon?

A. Well, in the State of Oregon, I would estimate that we ship approximately 10,000 cars a year; that is, trucks and passenger cars.

Q. Yes. Now, does that figure relate to points on the Southern Pacific Company that would be served?

A. Chiefly, chiefly, yes.

Q. Chiefly points on the Southern Pacific Company that [fol. 130] would be served in contract carrier truck operations if this application is granted?

A. That's right.

Q. Do you propose to change your method of transportation into Oregon from rail to contract truck carrier?

A. If this permit is granted, yes, we do, for the reason that the dealers are complaining now of the rail shipments over that which our competitors are using. In other words, our competitors are using truck to these points where we ship by rail, and they are able to obtain quicker deliveries at the least cost to them at their store door delivery; whereas, our cars are being shipped by rail to those dealers which necessitates their unloading and delay in delivering as well as the length of transit time.

This has been growing more and more every year, and at the present time our plant manager and our Region Sales Manager and our Zone Manager at Portland are very hot on me to extend our rights so as to permit trucking of automobiles to meet the competitive situation.

Q. And you find that it does take longer to get your shipments by rail than it would be by truck?

A. Yes, it does.

Q. Now, is Pacific Motor Trucking Company serving you in contract carrier service exclusively at your Chevrolet plant in Oakland; that is, with respect to transportation of Chevrolet automobiles and trucks?

A. That is correct, since 1935.

Q. And the service has been satisfactory contract carrier?

A. That is correct.

Q. Is there any particular reason why you require the service of a contract carrier as against a common carrier?

A. Because we prefer a contract carrier for the reason that we like the sole operation for ourselves, in other words, to strictly serve the Chevrolet account and to take care of the need in any emergency that may arise.

Q. Is it what you would designate as a highly specialized service?

A. That is correct.

Q. And the manner in which it is conducted is very similar to a proprietary operation; is that not true?

A. That is true.

Q. What are your requirements with respect to the transportation of automobiles in connection with the ability to accumulate or store them? Must they be moved as they are produced, or can you accumulate them and build up a supply and then ship them out?

A. No, we do not build up a supply. We, I presume, produce our automobiles in a different manner than any other manufacturer or assembler inasmuch as we build on dealers' orders, and our distribution is such that approximately 33 $\frac{1}{3}$ per cent of our production is our truck production, and 66 $\frac{2}{3}$ is passenger production.

It operates a little more one way than the other, and that means that we must consolidate our dealers' orders in order to meet our load accommodations.

This has been a pattern that has been sustained in Chevrolet for quite some time so when a dealer's truck is ready there are passenger cars ready at the same time, or two trucks or two passenger cars at the same time, and they automatically are shipped in one load.

Q. And would it be feasible for you to ship the trucks and the passenger cars by separate carriers?

A. No, it wouldn't, because then what would we do with the two passenger cars we may have for the dealer that has two trucks.

We would have two passenger cars and be building up passenger cars with no means of disposing of them.

Q. And that is the policy of the Chevrolet Division of General Motors Corporation to transport these automobiles and trucks in units of so many automobiles and so many trucks?

A. That is correct, in our mixed loads.

Q. Mixed loads?

A. Yes.

Q. Is it necessary that you have a carrier that is devoting all of his facilities to your transportation, a contract [fol. 133] carrier?

A. Yes, it is.

Q. Do you find that Pacific Motor Trucking Company has had the necessary equipment and facilities in the past to serve your plants?

A. They have.

Q. You heard Mr. Etzel's testimony with respect to the yard facilities adjacent to your plant at Oakland?

A. Yes, sir.

Q. And you agree with his statement in that respect?

A. I do.

Q. Do you have an employee who occupies a joint office with an employee of Pacific Motor Trucking Company?

A. Well, he is adjacent to a PMT employee, not in his office, but is adjacent to the PMT office.

We have an employee connected with PMT, and their employees are in our office to sign our orders at the time of release.

Q. Does the Pacific Motors Trucking Company maintain a dispatcher in that yard at all times?

A. At all times.

Q. Are there any other facilities available so that other carriers, motor carriers, could serve your plant in the transportation of your Chevrolet automobiles and trucks?

A. Not within the immediate vicinity of our plant.

Q. Is there any unoccupied land in that vicinity, to your [fol. 134] knowledge?

A. No, sir.

Q. Would it be necessary to pass over the property of Pacific Motor Trucking Company in order to pick up and transport automobiles from your Chevrolet plant?

A. That is our outlet.

Q. Is it of any advantage or benefit to you to have—well, strike that, please.

Your plant is also served by Southern Pacific Company rail facilities?

A. That is correct.

Q. Is it of any benefit to your firm to have available by one organization both truck and rail facilities?

A. Well, it has been that way.

Q. Would you please say why that is true?

A. Well, it is better to deal with a contract carrier, if I understand your question correctly. Would you repeat it again, please?

Q. I want to know if it is of any advantage to you to have both types of operations conducted by one carrier organization, having in mind that the Pacific Motor Trucking Company is a wholly owned subsidiary of Southern Pacific Company?

A. We haven't had any experience otherwise. It has been very satisfactory and the relationship has been one we do not have any question over.

[fol. 135] Q. Yes. You have heard the testimony that Insured Transporters, Inc. has authority to transport trucks from Plant No. 2 to points in Oregon?

A. I have.

Q. You understand that to be the case?

A. I do.

Mr. Lyons: You mean from Oakland, don't you?

Mr. Meinhold: I meant to say from Oakland. Well, I am restricting it to his business.

Mr. Lyons: Oh.

Mr. Meinhold: From his plant No. 2.

By Mr. Meinhold:

Q. In his plant No. 2, that's correct, isn't it?

A. That's correct.

Q. Do you know of any motor carrier that has authority to transport passenger automobiles from Oakland to points in Oregon?

A. I do not.

Q. Either common carrier or contract carrier?

A. No.

Q. You are only concerned, are you not, with Chevrolet automobiles and Chevrolet trucks?

A. That is correct.

Q. And those would be the automobiles and trucks that would move for you by Pacific Motor Trucking Company?

[fol. 136] A. That is correct.

Q. And based off your testimony, if this authority is granted, you would use it, of course?

A. We intend to.

Q. And you will enter into appropriate contracts covering that service?

A. That is correct.

Q. You are aware of the fact that Pacific Motor Trucking Company presently has temporary authority to conduct this operation?

A. Yes.

Q. That authority has not been used to date?

A. No, it has not.

Q. Has there been an occasion for its use?

A. Well, there was, but we happened to get around it in a way that it wasn't necessary to use it at that time; but, as I say, that was just the start of what is being—pressure being brought to bear by our dealers and our own organization to truck automobiles, and we want to obtain that right.

Q. Yes. Now, in other words, you requested Pacific Motor Trucking Company to obtain the temporary authority because of a condition that exists wherein there was a threatened shortage of box cars for rail movement?

A. That is correct.

Q. And your plant was in very heavy production at [fol. 137] that time, was it not?

A. That is right.

Q. But with respect to the permanent authority, that is not based on any emergency considerations?

A. No, it is not.

Q. You desire that authority because of necessity you meet competition, and the other reasons that you assign; is that correct?

A. That is correct.

Mr. Meinhold: I think that is all.

Mr. Lyons: No questions.

By Exam. Linn:

Q. Are both your plants located within the Municipal limits of Oakland?

A. That is right. They are approximately three miles apart.

Q. At this plant No. 2, do you produce Chevrolet trucks and GMC trucks on the same assembly line?

A. That's right.

Q. As a matter of fact, you manufacture in an area in which two types, two brands of trucks are produced and are not separated in any way?

A. No. The only thing is GMC has a portion of property adjacent to ours at Plant No. 2, and after the cars are—the trucks are O.K.'d, they are transferred to GMC's lot, and they become their property.

Q. But the two types of trucks are produced on the same assembly line?

[fol. 138] A. That's right.

Q. What is the exact trade name of your two types of trucks?

A. Chevrolet and GMC.

Q. Can the two types of trucks be distinguished from each other by their physical characteristics?

A. Yes, they can.

Q. In what way?

A. Well, by their design, their front end design, and the name on the front end. They have "GMC" on the front

end of their truck, and we have "Chevrolet" on the front end of our truck.

They have "GMC" on the back of their tail gate, and we have "Chevrolet".

Q. Any other physical characteristics by which the two types of trucks can be distinguished?

A. Not necessarily, except for paint combinations, the colors are different.

Q. Do you expect to continue rail service from your Oakland plant?

A. Do we expect to continue rail shipments?

Q. Yes.

A. To the extent of beyond where we intend to truck.

Q. Could you estimate approximately how much, what percentage of your volume to Oregon would be moved in PMT services as distinguished from the rail service?

[fol. 139] A. I would say about 70 per cent.

Exam. Linn: That is all I have.

Mr. DeLap: I have a question.

By Mr. DeLap:

Q. How do you presently serve your Oregon dealers at off-rail points?

A. Well, the dealer has to come to the rail head and pick up his cars and deliver them.

Q. They would still be shipped that way under this arrangement?

A. Well, I presume they would.

Mr. DeLap: That is all I have.

Mr. Meinhold: In line with the questioning, I would like to ask this.

By Mr. Meinhold:

Q. Is there any distinguishing characteristic between the GMC and the Chevrolet in so far as the motors are concerned?

A. Oh, yes. They are different motors, yes.

Q. Are the ratings different?

A. Yes. I am not a mechanic, I don't know much about an engine.

Q. I don't either. I am getting in deep water.

A. The radiator design is entirely different. The grille work, the chrome work, is different.

Q. Does GMC and Chevrolet manufacture the same size truck?

A. Primarily, yes. I think the GMC is rated a little higher than Chevrolet.

[fol. 140] Q. A little greater capacity?

A. Yes.

Mr. Meinhold: I think that is all.

Mr. DeLap: Anything further?

Mr. Lyons: No questions.

Mr. DeLap: Very well, that is all.

(Witness excused.)

• • • • •
O. D. ETZEL, previously duly sworn, testified further as follows:

Redirect examination.

[fol. 141]

By Mr. Meinhold:

Q. To your knowledge, has there ever been any complaint or claim of discrimination advanced by any shipper or consignee or other person resulting from the holding of [fol. 142] dual authority by Pacific Motor Truck Company?

A. There has not.

Q. And, in your opinion, if this authority is granted, will any discrimination result in so far as any shipper or consignee or other person is concerned?

A. I don't believe any actual discrimination would result, and I say that for the reason that the common carrier operating rights held by Pacific Motor Trucking Company between San Francisco, Oakland, and Ashland, Oregon, has been operating for a good many years, something in excess of ten, by Pacific Motor Trucking Company; and during that period, I have no recollection of an automo-

hile ever having been offered by the public for transportation.

While I have not analyzed all the freight bills covering that period of operation, I did ask our freight traffic manager for his recollection on the subject, and he confirms my opinion; namely, that he does not recall of an automobile having been offered for transportation, and it would seem that with the small use of that common carrier service by the public, there wouldn't be much discrimination involved.

Q. You have state-wide authority in California to transport assembled automobiles and assembled trucks as a contract carrier in intrastate commerce, have you not?

A. We do.

Q. And you are performing operations of that nature at [fol. 143] all of the plants in General Motors Corporation in the State of California?

A. We are serving, I think, in the State of California, every General Motors dealer.

Q. And that has existed for some period of time?

A. It has, since 1935, to the northern half of the state, and I believe within a period of about three or four years thereafter to points in the Southern part of the State from that territory.

Q. And to your knowledge has there ever been any complaint or claim of discrimination in so far as intrastate commerce is concerned, resulting from dual operations of Pacific Motor Trucking Company in California?

A. No, there never has been such a complaint.

Q. As a matter of fact, Pacific Motor Trucking Company does conduct common carrier operations in California, does it not?

A. It conducts very extensive common carrier operations in California, and many of those operations are conducted between points which are common to the service being provided as a contract carrier.

Q. But, of course, you don't transport the same commodities between the same points both as a contract and common carrier?

A. We do not. Our common carrier tariffs are restricted to the transportation of automobiles.

[fol. 146]

Plaintiff's Exhibit 2

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. MC-78787

(Sub. 35)

[Title omitted]

Docket No. MC-78787

(Sub. 36)

[Title omitted]

Transcript of Hearing—July 10, 1956

Room 238,
Old Mint Building,
San Francisco, California.

Met, pursuant to notice, at 9:30 a.m.

BEFORE:

F. Roy Linn, Examiner,
Interstate Commerce Commission.
and

JOINT BOARD NO. 47—A. MICHAEL BERNSTEIN, Special
Assistant to the Attorney Gen-
eral, Arizona Corporation Com-
mission.

• • • • •

[fol. 147] R. K. BOOTH was sworn and testified as follows:

[fol. 148] Direct examination.

By Mr. Meinhold:

Q. Have you given your name?

A. No. My name is R. K. Booth.

Q. And your office address?

A. 110 Market Street, San Francisco.

Mr. Jacobson: Go slow, so if I have any objections I can interpose them.

The Witness: Yes.

By Mr. Meinhold:

Q. What is your occupation?

A. I am vice-President of Pacific Motor Trucking Company.

[fol. 149] Q. You refer there to Melrose. Is that where the Oakland plant is located?

A. The Oakland plant is located in a sub-community in Oakland called Melrose.

Q. Proceed.

A. (Reading) There are presently based at Melrose 36 power units and 33 non-power units available and used in transporting automobiles and trucks. We have been advised by the Traffic Manager of Chevrolet Oakland Division of General Motors Corporation that based on this year's production it is estimated that 31 trucks and 112 [fol. 150] passenger cars will be produced and transported to dealers at Austin, Tonopah and Yerington, Nevada. In our opinion, this additional movement can be handled by our present equipment and without additional investment.

Similarly, at Van Nuys (Raymer), Pacific Motor Trucking Company has established a receiving yard adjacent to Chevrolet's assembly plant, where we likewise have employees stationed to arrange transportation of the vehicles

when they are released from the Chevrolet yard at that point into our yard for distribution. Service at this point for account of Chevrolet-Los Angeles Division General Motors Corporation, has been conducted by Pacific Motor Trucking Company since the facility was constructed in the latter part of 1947. No other highway transportation has been used by Chevrolet-Los Angeles Division,—

Mr. Jacobson: Just a moment. At that point I move to strike that on the ground that no proper foundation has been laid. I would like to ask the witness a couple of questions on voir dire before he proceeds. May I, Mr. Examiner?

Mr. Meinhold: No objection.

Exam. Linn: Go ahead.

Voir dire examination.

By Mr. Jacobson:

Q. What investigation, if any, have you made to determine whether or not any motor vehicles have been moved out of the Raymer plant by any other carrier by truck-away?

[fol. 151] A. I know from my own knowledge that the Chevrolet people at Raymer use Pacific Motor Trucking Company exclusively.

Q. I say, what investigation have you made that qualifies you to make the statement that no other carrier has transported any motor vehicles, new automobiles or trucks, out of the Raymer plant?

Mr. Meinhold: To dealers?

Mr. Jacobson: To dealers, or anybody.

A. I personally have made no investigation, but I know we handle—

By Mr. Jacobson:

Q. Just a moment. You have made no investigation, is that correct?

A. That is what I said.

Mr. Jacobson: I move that that portion of the answer be stricken, that portion of the testimony reading as follows, on the ground that no proper foundation has been laid for it, "No other highway transportation has been used by Chevrolet-Los Angeles Division, General Motors Corporation, at Raymer for distribution of its products to dealers."

Mr. Meinhold: Before you rule, may I ask a further question of the witness?

Exam. Linn: Go ahead.

Direct examination (resumed).

By Mr. Meinhold:

Q. In the event any other highway transportation were used by Chevrolet-Los Angeles Division, General Motors [fol. 152] Corporation, at Raymer, for distribution of its products to dealers, would you know about it?

A. I certainly would. It would be physically impossible to use somebody else at that location without going through our yard. I would certainly hear about anyone going into our yard.

Q. Have you discussed the matter with the Traffic Manager of General Motors Chevrolet plant at Los Angeles?

A. Yes.

Q. What did he advise in that respect?

Mr. Jacobson: I object to that as hearsay twice removed. No investigation was made. It is heaping inference on inference.

Exam. Linn: Perhaps it is sufficient if the testimony shows that any movement of new vehicles by motor carrier would require movement through the PMT yard.

Mr. Meinhold: And he would know about it.

Exam. Linn: Yes.

[fol. 153] GEORGE D. CRON, was sworn and testified as follows:

Direct examination.

By Mr. Meinhold:

Q. Please state your name and address?

A. (Reading) George D. Cron—C-r-o-n—69th Avenue and Foothill Boulevard, Oakland, California.

Q. What is your occupation and title?

A. I am Traffic Manager of Chevrolet-Oakland Division of General Motors Corporation and Fisher Body-Oakland Division of General Motors Corporation.

Q. Please summarize your experience in the field of traffic management.

A. I have been with the Corporation 34 years, and of those I have been Traffic Manager 30 years.

Q. Will you please describe the business of Chevrolet at Oakland?

A. Pardon?

Q. Will you please describe the business of Chevrolet at Oakland?

A. The business of Chevrolet-Oakland is to assemble passenger cars and trucks at the Oakland, California, plant. We employ approximately 2500 persons in these [fol. 154] operations. Exhibit 2 shows the general character of the physical facilities at which we transfer assembled units to Pacific Motor Trucking Company for highway movement.

Q. You heard the testimony of Mr. Booth, did you not?

A. I did.

Q. Did he correctly describe the operations at the Oakland plant?

A. He did.

Q. What is the distribution area for these Chevrolet products?

A. The distribution area for our Chevrolet products is northern California, Oregon, Washington, Idaho, Utah and Nevada; also Alaska and the Hawaiian Islands.

Q. How many dealers do you have in this area?

A. We have dealers located in 578 cities or towns at the present time. Of this total there are only ten dealers in the State of Nevada, and only two covered by this application.

Mr. Jacobson: May I ask, Mr. Meinhold, these 578 dealers in cities or towns, are they in the states included in this paragraph above?

Mr. Meinhold: I understand that is the whole area.

By Mr. Meinhold:

Q. Is that correct, your whole distribution area?

A. That is right.

Mr. Jacobson: That doesn't include Arizona?

Mr. Meinhold: No.

[fol. 155] By Mr. Meinhold:

Q. You don't serve Arizona from your plant, do you?

A. We do not.

Q. What was the approximate production of Chevrolet units at Oakland during the year 1955?

A. We produced 100,716 passenger cars and 24,800 trucks during the year 1955.

Q. Will you please state the volume of production for the first six months of 1956?

A. During the first six months of 1956 there were produced at Oakland 43,514 passenger cars and 13,221 trucks.

Q. What percentage of this production was moved from the plants in truckaway and driveaway service?

A. Approximately 50% of this production now moves by rail and the balance was in truckaway and driveaway service. The driveaway service is only utilized in the metropolitan area of the plant except in emergencies.

Q. Will you please explain to us what you mean by "emergencies"?

A. Emergencies cover those units of commercial vehicles which are owned by State regulatory bodies, such as the State of Nevada, where they ask for optional equipment from outside body builders to be placed on our chassis, and such bodies being too large to load in a box-

car, or load on any truckaway equipment, which makes it necessary, under contract, to deliver them to destination by driveaway service.

[fol. 156] Q. Normally you would not use driveaway service to transport the automobiles from Oakland to these points in Nevada?

A. Normally, no.

Q. What is the estimated annual movement of passenger cars and trucks to the points involved in this application?

A. The estimated total number of trucks to the points involved is 31 trucks and 112 passenger cars, which we anticipate will be moved in 1956.

Q. Approximately how many units moved to the entire State of Nevada, including the points involved in this application, during the first six months of 1956?

A. 1100 passenger cars and 350 trucks.

Q. What method do you follow in making shipments of passenger cars and trucks?

A. Our method of shipment requires us to ship mixed units, due to the production of trucks and passenger cars to meet dealers' orders. This is due to the fact that our dealers handle both Chevrolet passenger cars and trucks and generally order in mixed quantities. Therefore, shipments may be made in combinations of two trucks and two passenger cars, or three trucks and one passenger car, in a manner in which they place their orders with us.

Q. Or any other combination?

A. Or any other combination.

Q. Did your Company ask PMT to file this application? [fol. 157] A. Yes, PMT has served us for many years and we want it to provide this additional service.

Q. What prompted your request?

A. One of the reasons for this application is to get service in the delivery of our products which is comparable to that of our competitors which are using truckaway into Nevada. There are a number of advantages to such service. They include quicker transit time, store-door delivery, with no expense to the dealer whatsoever, and the arrival of cars generally in better physical condition. In addition, we have been confronted with severe car shortages from time to time, and it is necessary for us to have both

types of service to insure distribution of our product. The advantages of truckaway service are particularly important insofar as the points involved in this proceeding are concerned, because none of these points are served directly by rail. The distance from Yerington to the railhead, namely, Wabuska, is 12 miles; from Austin to the railhead, Fallon, 113 miles, and from Tonopah to the railhead, Mina, 70 miles.

Q. Were these three points that you have named at one time served by rail?

A. They were, by the Short Line Railroad, which has since been abandoned.

Q. What are the respective rail and truck transit times involved in serving these three points?

[fol. 158] A. The transit time, Oakland to the railheads, namely, Mina, Wabuska and Fallon, is third morning except on cars loaded on Thursday, which makes fourth-morning delivery for the reason these cars are handled in local service. Cars loaded on Thursday arrive in Sparks, Nevada, on the week-end and no service is afforded to these three railhead points on Sunday. This may be compared with normal transit time by truck from Oakland to Yerington in 10 hours, to Tonopah in 14 hours, and to Austin 12 hours. The advantage of such service directly to the dealer's place of business is apparent.

Q. Do you have occasion to make split deliveries of your shipments?

A. In the movement of our product in many cases split deliveries are necessary, especially in the case of small dealers who do not receive their shipments in carloads and must receive them mixed with shipments to larger dealers by rail. This requires these small dealers to drive considerable distances to pick up their cars and return to their dealership. On the other hand, truckaway handling affords a faster and more economical method and permits split delivery of units at the small dealer's place of business without any additional expense to him.

Q. Why do you use contract service in your operation?

A. It has been the policy of the Chevrolet Division for many years to utilize contract carrier service in the delivery of passenger cars and trucks. This is

a highly specialized form of transportation and requires a service which is available to us at all times without any interference whatsoever. Contract arrangements provide the greatest assurance of transportation availability at all times which is essential in the distribution of our product, inasmuch as we are geared to a constant flow from the assembly line to our dealers. In view of our distribution methods, our cars are built on dealers' orders and normally there is no accumulation of automobiles for storage purposes at any time. As a matter of fact, we do not have room for storage of more than a day's production in our plant. The smooth operations of our plants in maintaining the free flow of products require the very closest coordination between our operations and those of the transportation agency which serves us. This requires coordinated physical facilities and the closest coordination of dispatching operations. To obtain these objectives it is essential that we have the services of a carrier which is contractually obligated to give us specialized service without interference of other obligations, such as those as are necessarily assumed by a common carrier. These basic considerations account for general Chevrolet policy throughout the United States of dealing exclusively with contract carriers.

Q. You are familiar with the general policy of the Chevrolet [fol. 160] Division throughout the United States, are you?

A. Yes, sir.

Q. How has this worked out in your use of PMT service at Oakland?

A. The coordinated terminal arrangements with PMT at Oakland provides a striking illustration of the importance of a satisfactory contract carrier arrangement. Pacific Motor Trucking Company has its receiving yard adjacent to our yard, the two being separated by a wire fence. Cars are released to PMT through our gate immediately into their yard. These yards furnish the only available exit for outbound products, and there is no other physical way to move them. We maintain an employee who releases these cars after PMT's inspector inspects them

and accepts them by signing our orders. Offices which these employees occupy are adjacent to one another. PMT maintains a dispatching force in the yard at all times, which is essential to the expedited movement of our products, since we will clear as many as 30 units an hour to PMT.

Q. I think the operations have been described to some extent by Mr. Booth. Would you state that they have been correctly indicated by him?

A. I believe Mr. Booth covered that this morning.

Q. You don't feel it is necessary to go any further into that?

A. Not unless it is wanted.

[fol. 161] Q. Is it possible for you to separate dealer's orders as between passenger cars and commercial vehicles and ship each type separately?

A. No. Generally we do not ship passenger cars separately in loads or ship our truck models separately. All our orders from dealers are a combination of four units, whether it be passenger cars or trucks. These units are coordinated according to dealer's orders to come off the line simultaneously so as to make a combination of passenger cars and freight vehicles available for shipment by PMT. It would be impossible for us to try to segregate our truck and passenger models for the reason of the many dealers we have that get mixed combinations and it would tend to block our yard in order to make the combinations. The system we use at present is economical and expedites the movement of our product without any delay.

Q. When you say "PMT" you are referring to Pacific Motor Trucking Company?

A. Correct.

Q. How long has PMT been performing service for Chevrolet in the transportation of passenger automobiles and trucks as its exclusive contract carrier at Oakland?

A. We entered into a contract with PMT in 1935 and that company has performed service for us exclusively since that date without any interruptions.

[fol. 162] Q. Will you please state whether the service

which has been rendered by PMT during this period has been satisfactory?

A. The contract which we have with PMT has been very satisfactory over all these years; the principal reasons being, it has financial responsibility and suitable facilities to provide an efficient distribution of our product. Its contract carrier operations represent a highly specialized and personalized service which is available to us at all times without any interference whatsoever. As I have stated, our production and distribution method contemplates that cars and trucks are built on dealer's orders and without accumulation for storage purposes. PMT has consistently coordinated its transportation to meet our production needs and output fluctuations as they take place and its services have been available for any shipments tendered.

Q. Will you please give us an example of the coordinated transportation to which you have just referred?

A. Our releasing arrangement provides a good example. All units are supplied on an individual order or orders of four for a certain dealer or dealers. These units are produced on a daily date schedule and are moved from our yard after final O.K. by Chevrolet inspectors to our gate—and by "gate" I mean of the PMT yard—where they are inspected by PMT inspectors and then released to PMT, after acceptance of our shipping order. Normally, shipments [fol. 163] are made and on the road within thirty minutes after release.

Q. Has PMT had available all the equipment necessary to meet your highway transportation needs?

A. Yes—they have had available at all times for our use the equipment required for our shipments, including specially designed trailers for the exclusive handling of Chevrolet automobiles and commercial vehicles. This equipment has been modified from year to year to meet requirements occasioned by model changes in our cars and trucks.

Q. Are there any other contract carriers available for transportation of automobiles and trucks from Oakland to the points of Austin, Yerington and Tonopah, Nevada?

A. I know of no other highway contract carrier having

authority to provide truckaway and driveaway service in the transportation of Chevrolet automobiles and trucks for us to the destinations involved in this application.

Even if there were, it would not be consistent with considerations of economy and efficiency for us to depart from our policy of dealing exclusively with one contract carrier in providing our dealers with adequate and dependable service.

Mr. Meinhold: You may cross examine.

Cross examination.

By Mr. Jacobson:

Q. In other words, by your last statement, irrespective of how many existing available services are in the field at the present time, it would not be your intent to patronize [fol. 164] any of them, is that correct?

A. That is correct.

Q. You read into your testimony three words. On page 5, it says, "As a matter of fact, we do not have room for storage of more than a day's production", and then you read there, or added, "in our plant".

Was the rest of that sentence omitted intentionally, or did you have something in mind?

A. I mean in our plant.

Q. You meant in your plant?

A. Correct.

Q. Who owns the property immediately adjacent to it, occupied by PMT?

A. PMT.

Q. And the property was originally purchased in 1935 from Southern Pacific, was it?

A. That I don't know.

Q. You have been there for—

A. I have been there 34 years, but the property was always in their possession.

Q. In whose possession?

A. Either the Southern Pacific or PMT.

Q. I say, the plant was acquired, your plant was acquired from the Southern Pacific, their property?

A. No, I would say not. Our plant was established in 1916.

[fol. 165] Q. 1916?

A. Yes.

Q. You were always served by rail facilities?

A. Right.

Q. You say it is the policy of General Motors, or only Chevrolet throughout the United States to deal exclusively with contract carriers?

A. Yes. I am speaking of Chevrolet.

Q. Are you familiar with their policy all over the United States?

A. I have been advised of their policy.

Q. Do you have definite knowledge as to whether or not there are common and contract carriers serving certain Chevrolet plants at other points in the United States?

A. I believe not.

Q. Do you know of any other plants in the United States of Chevrolet that have plant facilities similar to that which you have in Oakland, where they are only accessible through the yard of a railroad?

A. I do not.

Q. Do you know of any other plant where only one carrier is admitted to receive automobiles?

A. I have been advised there are several such plants.

Q. Throughout the United States where you have a similar situation?

[fol. 166] A. Yes. I don't know if it is a similar situation, but they have one contract carrier.

Q. Do you know of any plant that has rail service as the only method of transportation out of the plant?

A. Not to my knowledge.

Q. You testified that in rare exceptions, or in emergencies, the unit had to have a body on it?

A. Correct.

Q. At some other location?

A. Yes.

Q. And then it is going to move by driveaway to the State authorities in Nevada?

A. If the unit is too large to be placed in a boxcar or truckaway equipment, yes.

Q. Have you in the past had experiences where the unit, when so equipped, couldn't be moved in boxcars?

A. Yes, sir.

Q. How did they move to points and places in Nevada?

A. Driveaway.

Q. Who drove them?

A. PMT.

Q. Under what authority?

A. Under their rights.

Q. To what points did you move any such vehicles within the past year?

[fol. 167] A. I would say Reno, Nevada.

Q. You say you know of no other carrier—are you familiar with the operative rights of Dallas & Mavis Forwarding Co.?

A. No.

Q. Do you know they have authority to serve points and places in Nevada in driveaway on heavy-duty trucks and truck chassis?

A. No.

Q. If such a service were available, and you had business moving in there, would you give them the transportation to perform?

A. No. We want PMT service.

Q. In other words, it is your position that unless you can get PMT you are going to take nothing, is that it?

A. It boils down to that.

Q. You have dealers throughout the State of Nevada, haven't you?

A. Correct.

Q. And all of those dealers are not located on the rail facilities of the Southern Pacific, are they?

A. Except these three points in this application.

Q. Aren't there dealers at any small towns in Nevada that handle your products?

A. No, sir. I testified we only had ten dealers in the State of Nevada.

[fol. 168] Mr. Meinhold: If I may interrupt. I think the witness may have not had in mind operations to Carson City and Minden.

The Witness: Yes. I mean, of this application, they are the only dealers offhand that don't have service now.

Mr. Jacobson: I thought that was what you had in mind. I wanted to clarify it.

By Mr. Jacobson:

Q. In other words, all of your other dealers have service, truckaway service out of your plant?

A. That is correct.

Q. How many years have they had that service?

A. I can't give you the exact date, but the first application was granted to PMT to truck into Nevada—do you have that date, Mr. Meinhold?

Mr. Meinhold: I don't have it offhand. I think it would appear from Exhibit 4.

Exam. Linn: 1941.

By Mr. Jacobson:

Q. So, since 1941 you have been giving some of your dealers in Nevada a truckaway service and the others you have they have had to rely on rail service?

A. Correct.

Q. How long have you known that the dealers wanted truckaway service?

A. Well, dealers are constantly asking us for service by truckaway, inasmuch as competitors are using truck service [fol. 169] into their locations.

Q. Suppose a dealer in one of these towns for which you are seeking authority should ask you tomorrow to use Dallas & Mavis Forwarding Co. to drive away a truck to them. Would you respect their wishes and render that service?

A. We control our own traffic.

Q. Who pays the freight?

A. We do.

Q. You charge it back to the dealer, don't you?

A. No, we don't. We prepay the freight.

Q. Have you a familiarity with the competitive rate situation that exists between your company and the other companies that are using truck service into Nevada?

Mr. Frizzell: I object. I don't think the question is germane to the issues in this case.

Mr. Jacobson: My position in asking these questions—

Mr. Frizzell: I object to the question asked and I would like to have a ruling from the bench.

Mr. Jacobson: My position in connection with that question is this: That normally I know the rules of procedure, I think, with respect to what is good and admissible evidence, and what isn't, but here we are confronted with a little different situation. We have got a 100 per cent subsidy here of a truck company owned by a rail company, where—

Mr. Frizzell: I object to that statement. Let us not [fol. 170] get into that. There is nothing in this record that shows there is any subsidy at all.

Mr. Jacobson: It shows it is 100 per cent owned by Southern Pacific.

Mr. Frizzell: That does not necessarily mean it is a subsidized operation.

Mr. Jacobson: Are you afraid of what I might say?

Mr. Frizzell: No. I am raising an objection to your question about some rate competition.

Exam. Linn: Read the question.

Mr. Frizzell: I don't think it is germane. I would like to have a ruling.

(Question read.)

Exam. Linn: The witness may answer the pending question as to whether or not he has that familiarity.

Mr. Frizzell: Do you have familiarity—the question is do you have familiarity with these tariffs? You should answer "Yes" or "No".

A. No.

By Mr. Jacobson:

Q. Any agreement for rates, would that be negotiated, or any contract, would that be negotiated by you or by somebody in your organization?

A. By our Traffic Director in Detroit, Michigan.

Q. Is this correct with respect to the entire plant, where you say, "These yards"—referring to the PMT yards—[fol. 171] "furnish the only available exit for outbound products, and there is no other physical way to move them."?

A. In the regular flow of traffic through our yard, O.K. yard, that is our only outlet.

Q. Have occasions arisen where those facilities have been used by trucks other than PMT that may have been under lease to them?

A. Not to my knowledge.

Q. Do you reserve the right as a shipper in an emergency, or otherwise, to instruct PMT to let other carriers, if there are any, move your vehicles through their yards?

A. We reserve the right at all times under contract with the Pacific Motor Trucking Company.

Q. So it is within your province to permit, under your contract, other carriers to move over the properties of PMT to bring in or deliver cars?

A. No.

Q. What did you mean?

A. You asked me if we permit PMT to lease other equipment to come into the yard and pick up—

Q. That isn't the question.

A. I misunderstood the question, then.

Mr. Jacobson: Read the question.

Mr. Meinhold: Why not restate it?

By Mr. Jacobson:

Q. Do you reserve the right under your contract to [fol. 172] utilize the facilities of PMT for ingress and egress to your property?

A. Correct.

Q. For other carriers, or otherwise?

A. Not other carriers; PMT only.

Q. Don't I make myself clear? In other words, the only one—you don't reserve the right to ask another carrier to come over their property to pick up an automobile in your place?

A. No, we don't.

Q. Suppose you had a strike—have you ever had such a thing happen on PMT?

A. We have had one once, but it didn't last long.

Q. Suppose a strike—

Mr. Frizzell: Mr. Examiner, I think we are getting into too much supposition here on cross examination. I object to it.

Exam. Linn: Supposing a little further, I imagine if PMT was out on strike, that perhaps some of the other carriers might likewise be out on strike.

Mr. Jacobson: Just the opposite. In the last strike the other carriers were out and PMT agreed to the thing so they could keep going. I think, in the absence of a contract here, we are faced with a rather unusual condition.

If the Examiner feels there is sufficient in the record on this, all right.

[fol. 173] Exam. Linn: Labor problems involve a special field, and perhaps we ought to discover whether there is a need for this service, or a basis on which it should be granted or denied over the long term, rather than under any strike conditions.

By Mr. Jacobson:

Q. I will ask this, then: If you, or a traffic manager that succeeded you, or your superiors, desired to have X Company come in and haul some automobiles or trucks, do you reserve the right to request PMT to let them utilize the facilities?

A. No.

Q. Now, assuming—well, I won't assume—where, in these cases that trucks were delivered to the Highway Department in Nevada, where were the installations made, in San Francisco, Oakland, or some other place?

A. That all depends. It could be in Oakland, or it could be in San Francisco.

Q. Regardless of where the installations were made, they moved the vehicles?

A. Right.

Q. Who moved the vehicles to the installation point?

A. PMT.

Q. After the installations were made they then moved them in driveway to the destination?

A. Yes, a continual move.

[fol. 174] Mr. Jacobson: That is all.

Mr. Meinhold: That is all.

By Exam. Linn:

Q. I note you indicate you will desire this service for two dealers at points in Nevada and that three points are involved. Can you tell us whether one of those dealers has a place of business at two of these destination points?

A. At the moment we do not have a dealer at Austin, but we anticipate appointing a dealer at that point. We want it covered.

Q. What has been done in the way of negotiations looking toward the employment of a dealer at Austin?

A. That is handled by our Sales Division. I wouldn't have knowledge of that.

Q. Do you know whether a dealer has in the past handled Chevrolet products for you at Austin?

A. Yes, they have.

Q. Up to what time?

A. I would say about four years ago.

Q. Your plants at Oakland are located within the municipal limits of Oakland, I take it?

A. Yes, sir.

Q. Do you know whether any other manufacturer of automobiles maintains a plant in the vicinity of the Chevrolet plants.

A. Not in the City of Oakland. You are speaking of a passenger plant, I assume.

[fol. 175] Q. Where there is a manufacturer of automobiles at any place adjacent to the City of Oakland?

A. We have Ford at Milpitas.

Mr. Meinhold: That isn't adjacent, is it?

The Witness: No.

Mr. Jacobson: Aren't there some trucks manufactured just out of Oakland?

The Witness: There is Peterbilt, which builds heavy equipment.

Exam. Linn: Where is the Peterbilt plant?

The Witness: It is in the Oakland city limits. They build big equipment.

Exam. Linn: Does counsel wish to develop any other facts of record which would show the necessity of restricting this service, if it is authorized, to the Chevrolet plants at Oakland?

Mr. Meinhold: May we have a moment, please?

Exam. Linn: Yes.

(Pause.)

Mr. Meinhold: We haven't any additional matter to offer in that connection, Mr. Examiner. However, we do have some further questions to ask of the witness on redirect.

Redirect examination.

By Mr. Meinhold:

Q. Mr. Cron, you mentioned the Peterbilt factory at Oakland. I believe you said that they manufacture heavy [fol. 176] trucks?

A. These big Diesel trucks; yes.

Q. What do you mean by that? Will you describe such a truck—are you familiar with those trucks?

A. I am not too familiar with them, except I see them on the highway hauling big semi-trailers. They are big heavy units.

Q. Several ton-capacity?

A. Yes. They have Cummings motors, called Fageol motors. Those are the large heavy-duty motors.

Q. What is the rated capacity of the Chevrolet trucks?

A. Two tons, two and one-half tons.

Q. They are much smaller than the Peterbilt truck?

A. Oh, yes.

Mr. Meinhold: That is all.

Recross examination.

By Mr. Jacobson:

Q. You are only appearing insofar as trucks are concerned, supplementing your testimony that you wanted PMT and nobody else, on behalf of the Chevrolet Truck Company, Chevrolet factory at Oakland, isn't that correct?

A. That is correct.

Exam. Linn: Off the record.

(Discussion off the record.)

Exam. Linn: On the record.

Any further questions of this witness?

Mr. Meinhold: None.

[fol. 177] Exam. Linn: That is all, Mr. Cron. Thank you.

(Witness excused.)

Mr. Meinhold: Our next witness is Mr. George R. Lilinthall.

GEORGE R. LILINTHALL was sworn and testified as follows:

Direct examination.

By Mr. Meinhold:

Q. Will you please state your full name for the record?

A. (Reading) George R. Lilinthall—L-i-l-i-n-t-h-a-l-l.

Q. What is your business address?

A. Chevrolet-Los Angeles Division, 8000 Van Nuys Boulevard, Van Nuys, California.

Q. What is your occupation?

A. Traffic Manager,

Q. Of what?

A. Traffic Manager of Chevrolet-Los Angeles Division, General Motors Corporation, and Fisher Body Division—Los Angeles plant.

Q. How long have you occupied that position?

A. I have been 34 years with the corporation and have

held the Traffic Manager's position at Los Angeles for ten years.

Q. And as Traffic Manager, do you have charge of all the transportation requirements of your plant?

A. Yes, I do.

Q. Please state the activities of your plant at Los Angeles.

[fol. 178] A. We assemble new Chevrolet passenger cars and commercial vehicles. We distribute these units to dealers in southern California, Arizona, Utah, southern Nevada, and Idaho. We serve 244 dealers at approximately 215 cities or towns.

Q. What is your approximate production?

A. Our total production for the year 1955 was 122,196. In the first six months of this year, our total production was 71,875 units, of which passenger cars accounts for 83% and trucks 17%.

Q. What is the approximate volume of shipments to the points involved in this application?

A. During the first six months of 1955—

Q. Pardon me, is that 1955 or 1956?

A. You want the approximate volume of shipments to the points in this application?

Q. Yes.

A. During the first six months of 1956 we actually shipped via rail 4,452 units to these points and I estimate that approximately 9,000 units per year will move.

Q. Do you encounter competition at these points in Arizona?

A. Yes, we do.

Q. What mode of transportation do your competitors use?

Mr. Jacobson: Just a moment, "these points in Arizona", are you referring to railroad points?

Mr. Meinhold: Right.

[fol. 179] Mr. Jacobson: Of the Southern Pacific?

Mr. Meinhold: Correct, points specified in the application.

Mr. Jacobson: Identified on Exhibit 1?

Mr. Meinhold: That is correct, Exhibit 1. Those are the Arizona points indicated on Exhibit 1. That is correct.

By Mr. Meinhold:

Q. There is a pending question:

What mode of transportation do your competitors use?

A. Our competition is using motor transportation exclusively to all these points.

Q. What transportation agencies have you been using in the area served by your plant at Van Nuys?

A. We have been serving California points through Pacific Motor Trucking Company ever since our plant started operations in 1947 and these California points absorb approximately 75% of our total production. The other states included in our normal shipping area have been served by rail transportation.

Q. What are your intentions with respect to serving the points involved in this application from the standpoint of transportation?

A. We intend to serve these points exclusively by truck, except in emergencies.

Q. What is your understanding of the term "emergencies"?

A. It would be driveaway service.

Q. What kind of an emergency would arise whereby you [fol. 180] would use driveaway service?

A. At times when we have a chassis going to a body company for putting on a special body, which is too big to load in a boxcar, or load on any motor carrier trailer.

Q. Have you had experiences of that nature?

A. We have had some experience in that. We have had some delivered to Los Angeles.

Mr. Jacobson: May I have that answer?

(Answer read.)

Mr. Jacobson: Your question was, "Have you had experiences of that nature?"

Mr. Meinhold: Yes.

By Mr. Meinhold:

Q. You have had instances where you have used driveaway service only to points in Los Angeles, or elsewhere?

A. No elsewhere, but I know we have had a couple in Los Angeles. We haven't had any that I recall in the last six months to Arizona.

Q. But you have moved to some other points in drive-away?

A. Right. It can come up any time. We don't get too many of them. At any time we might get one.

Q. For that reason you desire that PMT have driveaway rights?

A. Yes.

Q. Why do you propose to change from rail to truck service?

A. We requested Pacific Motor Trucking Company to [fol. 181] secure necessary contract authority which would enable us to provide the same type of service as our competitors use. This is desirable for a number of reasons. If we can ship by truck, it would mean next day delivery compared to three to five days by rail. There have been times when the railroad has experienced shortages of automobile cars and has been unable to meet our requirements, thereby causing considerable delay in making delivery. This is a matter of serious concern because of our policy of only making deliveries to dealers pursuant to their orders.

Q. Were you present in the hearing room when Mr. Cron testified?

A. Yes.

Q. Did you hear his testimony concerning the general policy of Chevrolet Division of General Motors with respect to exclusive use of contract carriers at its various plants?

A. Yes.

Q. Are you familiar with that policy?

A. Yes.

Q. Was that policy correctly stated by Mr. Cron in accordance with your understanding?

A. Yes.

Q. Is Pacific Motor Trucking Company serving your plant exclusively in truckaway and driveaway service?

A. Yes.

[fol. 182] Q. Why are you not using other carriers?

A. It is not practical to have other carriers operating at our plant for the following reasons:

By referring to Exhibit No. 3, you will see that our plant is situated just north of Southern Pacific Company's coast main line. The front of the plant faces west. The plant is on the south side. There is one main driveway adjacent to the plant which is used as the receiving entrance for incoming traffic.

Q. That is designated on the map by the letter "C"?

A. That is designated by the letter "C", yes.

Q. In red pencil?

A. Yes.

Q. Go ahead.

A. Chevrolet receiving department is at the southwest corner of the plant. We have only one shipping gate. This is at the southeast corner of the plant opening into Pacific Motor Trucking Company's yard for delivery of new cars and trucks for highway transportation.

Q. Is that gate shown on the map?

A. That gate is shown by the red letter "B".

Q. Go ahead.

A. New automobiles come off of the assembly line at the rear, or east end of the plant, and are driven to the inspection square. From there they are driven into what we call [fol. 183] the OK lot, which is designated in red pencil by the letter "A". This lot is located southeast of the plant building. As orders are received, cars are pulled from the OK lot and driven to the Pacific Motor Company's gate where they are inspected by Pacific Motor Trucking Company inspectors and are then accepted after signing our delivery order. This one shipping gate opens directly into Pacific Motor Trucking Company's yard.

Q. Is there any other access to the highway?

A. The only access from this yard to the highway is through Pacific Motor Trucking Company's yard out across the Southern Pacific tracks, up a private roadway which is in gray shadow, to Van Nuys Boulevard.

Q. There is a gate to your plant at the west end, or front of the plant at the point marked "C" in red on Exhibit 3, is there not?

A. Yes. I pointed that one out before.

Q. Could not carriers enter this gate for the purpose of loading automobiles or trucks?

A. No, they couldn't, and for the reason, as I mentioned before, that is our receiving entrance for incoming traffic and it would cause considerable confusion.

The only access to the highway from this gate is through Pacific Motor Trucking Company's yard and along a private roadway to Van Nuys Boulevard. The only other gate to [fol. 184] our plant is at the west end, or front of the plant—

Q. Just a moment, please. I think your answer to the question at this point is (indicating) here. The question is this:

“Could not carriers enter this gate, that is the one marked “C” on the map, for the purpose of loading automobiles or trucks?”

A. This is our receiving or inbound entrance. Our receiving department is in the southwest corner of the plant and any attempt to move outbound and inbound shipments through the same gate would be impractical and result in congestion to the entrance to the receiving department because of the continual flow of truck loads of inbound materials. Also, it would prove very hazardous and dangerous for us to attempt to drive new automobiles up this driveway as we would be going against the normal flow of traffic. Further, in view of the fact that we have only one shipping gate, our checking and inspection operation is set up at that point, which would mean additional cost to us in checking cars out at another point. Also, the area at the rear of the plant and around the east end of this receiving driveway is continually congested with new cars, and it would be almost impossible to bring any new cars from the OK lot to this receiving driveway, because of the constant moving of cars from the repair area and the assembly line to the inspection [fol. 185] square and to the paint repair line, which is located on the south side of the receiving driveway.

Q. What other considerations, if any, account for your policy of dealing with a single carrier?

A. There are other considerations which underlie our policy of dealing with one motor carrier for the transportation of our products.

Generally speaking, our situation in this respect is similar to that covered by Mr. Cron's testimony, including the necessity for mixed shipments and split deliveries. Our whole operation is designed to provide maximum efficiency and economy in the production of cars and trucks. This is essential in a highly competitive business such as ours.

By establishing a contractual arrangement with one carrier, we avoid divided responsibility and confusion and thus receive the greatest possible assurance of completely dependable transportation. The exclusive service which Pacific Motor Trucking Company gives us is completely dedicated to the needs of Chevrolet and no other demands can be made upon it. In this respect Pacific Motor Trucking Company service differs from common carrier service. The exclusive contract permits the closest coordination of Chevrolet production and Pacific Motor Trucking transportation and permits an uninterrupted flow, with minimum storage, of automobiles and trucks to our customers.

[fol. 186] As I have indicated, Pacific Motor Trucking Company's receiving yard is immediately adjacent to our property and the normal flow of deliveries from our plant to PMT for movement beyond normally average around 45 cars per hour. To avoid backups and disruptions, it is necessary to have a highly coordinated dispatching arrangement, which PMT has provided.

The undivided responsibility which PMT assumes in this operation avoids confusion, conflict and unnecessary expense in handling this flow of traffic. The arrangement we have enables us to secure transportation on the most economical basis and still permits the operator to enjoy a fair profit.

Furthermore, the arrangement is mutually advantageous because it enables us to work closely with the carrier with respect to modernization of equipment and quantity of equipment necessary to handle our products.

Q. What is your position with respect to this application?

A. Our experience with PMT has been satisfactory in every respect and granting of the application will provide service consistent with our whole plan of operation. As I

have said, our physical and operating layout is geared to single motor carrier service and not to multiple carriers.

Q. What has been the reaction of your dealers in California who have been receiving PMT service since 1947?

Mr. Jacobson: I want to object to that as incompetent, [fol. 187] irrelevant and immaterial, and not within the issues of this case.

Mr. Meinhold: That may be stricken.

By Mr. Meinhold:

Q. Have you had any complaints from your dealers regarding PMT service in the delivery of your products?

A. We have never, to our knowledge, had any complaints regarding PMT service in the delivery of our products by our sales department or the dealers.

Mr. Meinhold: You may cross examine.

Cross examination.

By Mr. Jacobson:

Q. Have you had requests from your dealers in other states to give a truckaway service as against the rail service?

A. We have from time to time.

Q. Over what period of time?

A. Every so often.

Q. You have been competitive with truck service into Arizona for many years, haven't you?

A. That is right. I don't know how many years.

Q. For at least the last 15 years?

A. Yes.

Q. And you have been familiar, as traffic manager, with the situation with respect to the movement by truckaway carriers of motor vehicles to Arizona by truckaway service as against your rail service, have you not?

[fol. 188] A. Yes, sir.

Q. It has been over an extended period of time?

A. Yes.

Q. Haven't you, over an extended period of time, received

requests from your customers to give them the direct motor truck service?

A. No.

Q. Why are you suddenly offering them a service that they haven't requested?

A. Well, we feel that our competitors are getting that service and we believe now that we should give our dealers the same service.

Q. When did you come to that opinion?

A. I believe that has been under consideration for quite a little time.

Q. What basis have you for your statement that the rendition of the proposed service by PMT is going to give you—excuse me a minute—a more economical service and a service that will be profitable to the carrier?

A. Well, more economical service will be more economical to our dealers, for one thing.

Q. How do you know it will be more economical to your dealers?

A. Well, because the cars will be delivered right to their door.

Q. Who pays the freight?

[fol. 189] A. We pay the freight.

Q. Are you going to give the dealer the benefit of reduction in freight?

A. We don't pay the unloading cost.

Q. Have you made any comparison to determine what the amount of the saving is going to be if you get this service?

A. No, I haven't.

Q. How do you know it will be more economical to yourself, the dealers, or be profitable to the PMT?

A. Well, it costs a lot more to load automobiles than it does to ship them by truckaway.

Q. You don't reflect that saving—that saving isn't reflected in the cost to the dealer, is it?

A. No.

Q. Do you respect the wishes of the dealer with respect to their desires for a certain method of having their vehicles moved?

A. We try to.

Q. You have known for at least the past ten years, have you not, that, as a traffic manager in Los Angeles, that there are existing common carriers and contract carriers offering the service?

A. Yes.

Q. Have you ever given them any business?

A. No, we have not.

[fol. 190] Q. But still the dealers have requested it, haven't they?

A. There have been requests from time to time.

Mr. Frizzell: I would like to raise an objection. I think he has covered the territory that he is examining the witness on right now. You covered that material a while ago and this is repetition.

Mr. Jacobson: Make your objection.

Mr. Frizzell: I object.

Mr. Jacobson: This is the second witness. I have just started.

Mr. Bernstein: He will be allowed to answer.

Mr. Jacobson: Read the question.

(Question read.)

By Mr. Jacobson:

Q. Is that correct?

A. Correct.

Q. You still didn't use the existing available service of either contract or common carrier, did you?

A. We couldn't—

Q. Just answer "Yes" or "No".

Mr. Meinhold: It has been asked and asked several times.

Mr. Jacobson: If you have an objection, make it.

Mr. Meinhold: I object on that ground.

Mr. Jacobson: I want to call the Commission's attention to the fact that, through this method of canned testimony, he is incorporating the testimony of another witness that just preceded him. I should be able to go into that testimony.

Mr. Meinhold: You have already gone into it. You have asked the witness the same question a number of times.

Mr. Jacobson: I will stand on the record.

Mr. Bernstein: The objection is overruled at this time.

Mr. Jacobson: Read the question.

(Question read.)

A. No.

By Mr. Jacobson:

Q. During the past few years have you been solicited by the Robertson Truck-A-Ways, Inc., who offered their facilities from your plants to all points and places in the State of Arizona?

A. Yes. They have called me and informed me of the service they have. They informed me that if at any time we had any need for that service that they would appreciate it if we could it (sic) give it support.

Q. They give such service and can make such shipments and make split deliveries?

A. As far as I know, they do.

Q. And as traffic manager for that period of time, is one of your duties to know what services are available, is it not, Mr. Lilinthall?

A. Well, not in this case.

Q. In other words—

A. What is the question?

[fol. 192] Mr. Johnson: Let the witness finish his answer.

Mr. Jacobson: I will be happy to have him do so. Read the question.

(Question read.)

A. I will say, in answer to that, yes.

By Mr. Jacobson:

Q. Are you familiar with the services and facilities of B. & H. Truckaway?

A. All I know is that they operate as a contract carrier for Studebaker.

Q. Haven't they called on you many times, you and your associates, and told you about their contractual service and offered to enter into an agreement to transport your vehicles to all points and places in Arizona?

A. I have had Mr. Boner in once, that I remember, and he just explained the service, that he had service and it was available to us any time we could use it.

Q. And all of this after you had knowledge that some of your *shippers* desired truckaway service?

Mr. Johnson: Shippers?

Mr. Jacobson: I mean, some of your dealers.

A. I wouldn't say that.

By Mr. Jacobson:

Q. Haven't you had, over the period of the last three or four years haven't you had constant requests from General Motors Chevrolet dealers throughout the State of Arizona to send their vehicles in by truckaway?

[fol. 193] A. Not that I know of. I have only heard just recently that there have been.

Q. Wouldn't matters of traffic come to your attention?

A. Yes.

Mr. Meinhold: I object to the materiality of this line of questioning.

Exam. Linn: There is no pending question at the moment. Go ahead.

By Mr. Jacobson:

Q. You have heard of the Hadley Auto Transport, have you not?

A. Yes, I have.

Q. You know that they render a contractual service between Los Angeles County and all points and places in the State of Arizona?

A. Yes, I know that they are a contract carrier for Ford.

Q. Have you ever investigated to find out that they are contract carriers for others beside Ford?

A. No. We have had no reason to.

Q. Are you familiar with the facilities of the general type of equipment of those three carriers?

A. No, I am not.

Q. In other words, are you of the same opinion, or do you take the same position as your predecessor in the chair?

A. Yes.

Q. That is, that you don't care what service is offered, [fol. 194] it is PMT or else?

A. The reason for that is, I think I have stated in here, we are geared up for one contract carrier operation. The characteristics of our plant do not make it practical to bring in another carrier.

Q. Who owns the roadbed, this road, designated on the map—

Exam. Inn: Hasn't that been clearly established already?

Mr. Jacobson: I don't know whether the Southern Pacific owns it or General Motors owns it.

A. This roadway here (indicating); we don't own it.

By Mr. Jacobson:

Q. The roadway you are referring to is a roadway for ingress and egress, other than the road that brings you from this point "C" and other than the road that takes you out on PMT property?

A. Yes.

Q. Who owns that right-of-way?

A. This (indicating) road here?

Q. Yes. Isn't that Southern Pacific right-of-way?

A. Either Pacific Motor Trucking or Southern Pacific.

Q. So, other than the one road that you call your incoming road, the only ingress and egress that anybody can have is over the property of either the Southern Pacific or PMT?

A. Right.

Q. Now, you are familiar with the fact that Robertson Truck-A-Ways has hauled Chevrolets out of your plant? [fol. 195] A. Not out of our plant.

Q. Where did they haul them from to Arizona?

A. They hauled them from our driveway out front.

Q. Did you deliver them to the driveway?

A. We delivered them to the driver.

Q. They have hauled quite a few cars, have they not?

A. We have no control over that. It is the government.

Q. Did you have any complaint about this service?

A. No. We wouldn't hear about that. That is strictly between the government and the haulaway company.

Q. Have you had any complaints about their service?

A. No.

Q. As I understand it, it is your desire, by this application, to give to your dealers the same type of service other dealers are getting in truckaway service from your plant, is that correct?

A. That is right.

Q. How are you going to ship your cars to Flagstaff, Arizona?

A. We will ship those the way they are moving now, by rail.

Q. How are you going to ship to Winslow, Arizona?

A. Winslow, Arizona, we will have them go PMT—pardon me—they will go by rail.

Q. How are you going to ship to Ajo, Arizona?

A. That will go by Pacific Motor Trucking Company if the permit is granted.

[fol. 196] Q. Is Ajo on the Southern Pacific lines?

A. I believe it is on the Southern Pacific.

Q. There are a lot of towns, and you have a lot of dealers at points and places in Arizona that are not served by Southern Pacific as rail points, haven't you?

A. There are a few.

Q. Why are you discriminating against those dealers in favor of the dealers that are on the Southern Pacific lines?

A. Well, it was our understanding that Pacific Motor Trucking Company had an agreement with the Southern Pacific that they would not get outside of Southern Pacific territory.

Mr. Jacobson: Read that answer, please.

(Answer read.)

A. (Continuing) Also, the points that are involved in this application are the volume of our shipments into Arizona. In other words, as I pointed out before, we had 4,452 units to these points the first half of this year, against 792 to the other points.

By Mr. Jacobson:

Q. You have shown 215 dealers in cities or towns in the states of Arizona, Utah, Southern Nevada and Idaho. Have you a breakdown of the dealers in each of the towns in Arizona?

A. No, I do not. I would say approximately 23 points, or 23 dealers to the points involved in this application.

Q. How many dealers have you in Wickenburg?
[fol. 197] A. One, I believe.

Q. He isn't on the Southern Pacific, is he?

A. I don't believe so.

Q. That is the closest point to the Arizona-California border, isn't it?

A. Yes.

Q. What will he have to do to get his cars?

A. Same as he has been doing.

Q. There is available service by two contract carriers and one common carrier from your plant to the dealer in Wickenburg. Why would you discriminate against him and not give him that service?

Exam. Linn: Possibly it is a question of the invasion of territory served by one railroad by some other railroad.

A. It is our intention here very shortly, probably, or some time later, to request Pacific Motor Trucking Company to file an application for the rest of the points.

By Mr. Jacobson:

Q. Oh. How would that dovetail with—are you familiar with this arrangement between the rails that they won't invade each other's territory?

Mr. Meinhold: Just a moment. "This arrangement"—
what do you mean by that?

Exam. Linn: No arrangement has been stated.

By Mr. Jacobson:

Q. Do you have any agreement, or any plan by which
one rail carrier won't invade the territory of another?
[fol. 198] A. No.

Mr. Meinhold: I object to that. That is a matter for
the Commission's decision.

By Mr. Jacobson:

Q. You have testified that you subscribed to the state-
ments of your witness that preceded you, that is, that it
was the policy of Chevrolet to have plants with only one
access, ingress and egress, so the rail carrier can get all
the business.

What other plants do you know—

Mr. Johnson: I object to that question as being mis-
leading—

Mr. Jacobson: I am not trying to mislead. That is the
trouble with taking—

Mr. Johnson: Please let me state my objection.

Mr. Jacobson: I thought you had finished.

Mr. Johnson: Would you read what I said?

(Statement read.)

Mr. Johnson: —on the ground that it is based on facts
not shown of record and, as a matter of fact, contradictory
to the record, and argumentative.

Mr. Jacobson: These are the questions that were asked
you and the answers given by you:

"Q. Did you hear his testimony concerning the general
policy of Chevrolet Division of General Motors with respect
[fol. 199] to exclusive use of contract carriers at its various
plants?

"A. Yes.

"Q. Are you familiar with that policy?

"A. Yes.

"Q. Was that policy correctly stated by Mr. Cron in accordance with your understanding?

"A. Yes."

By Mr. Jacobson:

Q. Now my question to you is this: Did you hear Mr. Cron testify that he wasn't familiar with all the policy all over the United States?

A. Yes.

Q. Are you more familiar with the policy of Chevrolet all over the United States than he was?

A. No.

Exam. Linn: There is no basis on which we can gauge the value of that examination.

By Mr. Jacobson:

Q. Have you any agreement in Los Angeles, or in the Van Nuys plant, by which you can permit other carriers to traverse the property of PMT?

A. No.

Q. You have the main inlet gate and you say that is highly congested. All traffic comes in and goes out the same gate, doesn't it?

A. That is right.

[fol. 200] Q. In other words, the delivery trucks come in there and they deliver the merchandise and go back out?

A. Yes, but our receiving room is in the southwest corner of the plant. That is where you deliver trucks.

Q. That is the means of access that Robertson Truck-A-Ways had in making pickups?

A. That is right. As I said before, we have no control over that. We don't like it because it is inconvenient. It is also somewhat dangerous and the volume, luckily, is very very small. In the last six months we have had 194 units, which is less than half of a per cent.

Mr. Meinhold: Of what?

The Witness: Of our entire production.

A. (Continuing) Also, every time we do have to deliver the cars out that front gate it means that it breaks up

our operation out in the back and delays us in releasing cars back there; either that, or we have to pull a man from some place else, also take a patrolman away from a post in the receiving department.

By Mr. Jacobson:

Q. As traffic manager of the Los Angeles Chevrolet plant, is your position the same as evidenced by the witness from Oakland, that you want the service of PMT, or else you are going to retain it on rail?

A. We want the service of PMT.

Q. Assuming that this application should be pending [fol. 201] for the next six months, just an assumption—let us take another assumption.

Assume that the Commission should see fit to deny this grant of authority, are you going to continue to ship by rail, or are you going to use other means of transportation?

A. We will continue to ship by rail.

Q. Notwithstanding the fact that there are existing facilities available?

A. Well, we can't use them because our plant characteristics will not permit any volume to go out the receiving gate.

Q. You mean because PMT and the Southern Pacific control the property around you, is that it?

A. Not necessarily that.

Q. What else is there?

A. Well, because we are using PMT, and their service has been good, and we want them to continue with the new territory, or handle new territory.

Q. If the shippers, as you say, are demanding a competitive, well, if the dealers are demanding a competitive service to their competitors', wouldn't it be your policy to modify your procedure and give them that service?

Mr. Johnson: For the sake of clarity, I don't think you mean to use the word "shippers"?

Mr. Jacobson: I changed it.

Read the question.

[fol. 202] (Question read.)

Mr. Bernstein: I think we know the answer to that. There is no need to go into that further.

By Mr. Jacobson:

Q. Do any dealers pick up automobiles at your place?

A. No.

Q. You don't have any drive-out business there at all?

A. No.

Q. In other words, a dealer has to take it through PMT, is that correct?

A. We deliver them through PMT.

Q. Every vehicle that comes off of the line is delivered to a PMT man at the gate, is that correct?

A. Not every one.

Q. Which ones aren't?

A. The ones we ship by rail.

Q. Other than those that go by rail, Southern Pacific, they are all delivered to the PMT yard; is that correct?

A. That is right, except the ones the government comes in for.

Q. Now, the trucks that serve you for PMT are the same trucks that serve the other General Motors plant, they interchange them, and they are the ones that serve the General Motors plant at Southgate, are they not?

A. Yes, they do.

Q. And you have seen trucks in there, have you not, that [fol. 203] are leased from other carriers?

A. One time, yes.

Q. Only on one occasion?

A. One occasion is all that I know of.

Q. Do you know that during the past year there have been many, many instances—

Mr. Frizzell: I object.

Mr. Jacobson: Wait until I finish the question.

Mr. Frizzell: It is objectionable as far as you have gone.

Mr. Jacobson: Do you want to object now, or wait until I finish?

Exam. Linn: Finish your question.

Mr. Jacobson: Will you read the question as far as I went?

(Question read.)

Mr. Jacobson: I will withdraw the question.

By Mr. Jacobson:

Q. As traffic manager, do I understand that you only know of one instance where leased equipment came in?

A. Yes.

Q. Have you ever, as traffic manager, had the occasion to look at the facilities of Hadley Auto Transport, Robertson Truck-A-Ways or B & H?

A. No.

Q. You weren't interested?

A. I had no reason to be.

Q. Assuming that it takes four months for this matter [fol. 204] to be decided, during that period of time are you going to avail yourself of the facilities of existing carriers to meet your dealers' demands?

A. No.

Q. May I ask one other question. Do you consider contemplating asking—strike that.

Do you know what the Santa Fe Transportation Company is?

A. No.

Q. Didn't you know that is a subsidiary, a truck subsidiary of the Santa Fe Railroad?

A. Yes.

Q. Do you contemplate asking the Santa Fe Transportation Company to seek a certificate to serve the points on the lines of the Santa Fe in Northern Arizona so—

A. No.

Q. Let me finish the question—so that the dealers in Northern Arizona can get the same expeditious service as the dealers in Southern Arizona?

A. No.

Q. So if PMT should secure these rights only those dealers that are on their lines will enjoy the benefits of them?

A. Right now, yes. As I stated before,—

Exam. Linn: You have answered the question.

Mr. Jacobson: I believe that is all.

Exam. Linn: Any redirect?

[fol. 205] Redirect examination.

By Mr. Meinhold:

Q. Mr. Lilinthall, I believe you testified that during the first six months of 1956 you shipped approximately 4,452 units to the points involved in this application?

A. That is right.

Q. Do you know the number of units that were shipped during that period to other points in Arizona?

A. Yes, 792.

Q. 792?

A. That is right.

Q. I think you testified that there were 23 dealers located at the points involved in this application?

A. That is right, approximately 23.

Q. And I don't know whether you said that you know how many dealers were situated at the other points in Arizona. Do you know?

A. Something, I would say, like 20 or 21.

Q. At the other points?

A. Yes.

Mr. Meinhold: That is all.

Recross examination.

By Mr. Jacobson:

Q. You said there are 22 dealers that are on rail?

A. Approximately 22.

Q. Would you take my word for it if I said there are [fol. 206] 14 large towns not on rails of the Southern Pacific?

A. 14 is right. I said 20 or 21.

Redirect examination.

By Mr. Meinhold:

Q. Mr. Jacobson I believe mentioned cities or towns; my question was with respect to dealers. Are you talking about 14 dealers, or 14 cities or towns?

A. I believe it is 14 dealers.

Q. Located off these points?

A. Right.

Mr. Jacobson: Just a moment.

Exam. Linn: Let us be clear about that. Does this figure of something like 4,500 cars in the first six months of 1956 refer to cars delivered to 23 dealers in Arizona?

The Witness: That is right.

Exam. Linn: And how many points in Arizona were these deliveries made?

The Witness: Other than the Southern Pacific points? I didn't get the question.

Exam. Linn: You made deliveries in the first half of 1956 to 23 dealers. Is each one of those dealers located in a different point?

The Witness: Well, in Phoenix there are three, in Tucson two, and the rest are all one dealer.

Recross examination.

By Mr. Jacobson:

Q. It isn't clear to me. How many dealers are located [fol. 207] outside of the points by the Southern Pacific, if you know? You said 14 before.

A. That is right.

Q. There are 23 on the line and 14 off the line, is that correct?

A. I don't know if that is correct. I am not sure. I know there are 23 points on the line.

Q. And of those 23, three and two of those 23 are in Tucson and Phoenix?

A. Correction there. I am wrong. It is three dealers in Phoenix and one at Tucson, and the rest of the points have one.

Q. So almost half of the dealers are off the line, and a little more than half on the line?

A. Right.

Mr. Jacobson: That is all.

Exam. Linn: Off the record.

(Discussion off the record.)

Exam. Linn: On the record.

You are excused.

(Witness excused.)

[fol. 208] DAVID M. LEE being previously sworn, testified as follows:

Direct examination.

By Mr. Jacobson:

Q. State your name and address?

A. David M. Lee, Los Angeles, California.

Q. What is your business address?

[fol. 209] A. 7101 East Slausson.

Q. By whom are you employed; other than Dallas & Mavis?

A. Robertson Truck-A-Ways, Inc.

Q. In what capacity?

A. Vice-president and General Manager.

Q. Where is their principal place of business?

A. Los Angeles, California.

Q. At what location?

A. 7101 East Slausson Avenue.

Q. You say the principal place of business is 7101 East Slausson Avenue?

A. Yes, sir.

Q. At that location what facilities and what properties does Robertson Truck-A-Ways have?

A. We have an office, completely modern, eight acres of improved land fenced and lighted. Also garage facilities,

fueling facilities, and any necessary equipment it takes to operate our truck transport business.

Q. Is all of that property owned by Robertson Truck-A-Ways?

A. Yes, it is.

Q. Robertson Truck-A-Ways has authority from the Interstate Commerce Commission, under Docket MC-109772, to serve points and places in Arizona from the Raymer plant?

A. Yes, sir.

Q. Does your company render a service between points [fol. 210] and places in Los Angeles and points and places in Arizona?

A. Yes, we do.

Q. How extensive in Arizona?

A. We have all points and places in Arizona.

Q. Now, how frequently do you have vehicles in Arizona?

A. Every day.

Q. Who is your principal company, or what is the principal company for whom you transport motor vehicles?

A. Chrysler Corporation.

Q. As a common carrier do you transport motor vehicles for anybody that seeks your service?

A. Yes, we do.

Q. What facilities, or what office facilities, or facilities of any kind, do you have in Arizona?

A. We maintain an office, management yard, improved yard, lighted and fenced, for handling any of the traffic that goes through, stops off, or en route, along with filling station facilities.

Q. Does your company engage exclusively in the transportation of motor vehicles by truckaway and driveaway?

A. Yes.

Q. Approximately how many trucks and trailers does your company operate at the present time?

A. We have about 105 trucks and about 112 trailers, well, 110 or 115 trailers.

[fol. 211] Q. And is all of that equipment available for the transportation of motor vehicles?

A. Yes.

Q. What is the situation with respect to the volume of

business you are enjoying in comparison to the volume of equipment you have at the present time?

A. Very little right now. 25 per cent of our equipment is in use.

Q. And 75 per cent is idle?

A. Yes.

Q. Are you seeking, is your company seeking business between all of the points that you are authorized to serve, including the Arizona territory?

A. Yes, we are.

Q. Are you actively soliciting that business?

A. Yes.

Q. Has your company made their services known to the Chevrolet plant at Raymer?

A. Yes.

Q. Have you solicited that business?

A. Yes, we have.

Q. Personally?

A. Personally.

Q. And through your people in the office?

A. Yes, sir.

[fol. 212] Q. Over what period of time?

A. Oh, for the past 18 months.

Q. Do you know Mr. Lilinthall, who was a witness here?

A. Yes.

Q. Did you ever meet him?

A. Yes.

Q. Have you delivered to them copies of your rights and tariff?

A. Yes.

Q. Have you solicited their business to all dealers in Arizona?

A. Yes, we have.

Q. Have you ever received any business from him direct?

A. No, sir.

Q. Have you ever transported any motor vehicles, any Chevrolet automobiles out of the plant at Raymer?

A. Yes, we have handled some.

Q. Approximately how many, and over what period of time?

A. I think the last year we probably handled 25 or 30.

Q. Do you have any difficulty getting them out?

A. No, we had no difficulty.

Q. Have you had any complaints about the service?

A. We have had no complaints.

Q. To what points in Arizona do you deliver the Chevrolet?

A. I think there is an exhibit there. I don't recall the points.

[fol. 213] Q. I show you what purports to be a two-page document and I will ask if that was prepared under your supervision and direction?

A. Yes, it was.

Q. What does it show?

A. It shows a listing of Chevrolet units handled by Robertson Truck-A-Ways to various points, including the State of Arizona.

Q. All of these were received by your company as a common carrier out of the Raymer plant at Van Nuys?

A. Yes.

Q. And delivered to destinations?

A. Yes, they were.

Q. Were you able to get them without going over the property of PMT?

A. Yes. As I recall, they did not go over the PMT property.

Q. Did you have any difficulty in getting these shipments out of the plant at Raymer for delivery?

A. No. Arrangements were made for us to get the vehicles.

Q. Arrangements were made for you to get the vehicles?

A. Yes.

Q. Did you encounter any difficulty in getting the vehicles?

A. None.

Q. Did you have any complaint from anybody as to the service you rendered to Arizona on those vehicles you delivered?

[fol. 214] A. No.

Q. Does your company, under its tariff on file, provide for split deliveries?

A. Yes.

Q. And off-main highway deliveries?

A. Yes.

Q. Are you in a position to render a service to all points and places in the State of Arizona from the Raymer plant?

A. Yes.

Mr. Johnson: I object to that as calling for a conclusion of the witness and self-serving.

Mr. Bernstein: I think he can answer.

A. We are authorized to serve all points in the State of Arizona.

By Mr. Jacobson:

Q. Would you accept the business of the Chevrolet Company for transportation to Arizona if tendered to you?

A. Yes, indeed, we would.

Q. Have you the available facilities to render such service?

A. I think we have, yes.

Q. If additional equipment is required would you put on that additional equipment?

A. We would be very happy to.

Q. At the factories with whom you do business do you receive the vehicles at the gate and are they checked in by [fol. 215] your company?

A. Yes.

Q. And inspected?

A. Yes.

Q. Are you familiar with the method used by PMT in accepting automobiles from the General Motors?

A. Only what I have heard today at this hearing.

Q. As a matter of fact, you have transported motor vehicles for General Motors out of Southgate, haven't you?

A. Yes.

Q. To points and places in Arizona?

A. Yes, sir.

Q. On more than one occasion?

A. I believe, so, yes.

Q. Have you ever had any complaints from General Motors as to the service given out of the Southgate plant?

A. No, we have not.

Q. Whose property did you receive the cars on from the General Motors plant in Southgate?

Mr. Meinhold: Just a moment. I believe the testimony of the witnesses related only to the Chevrolet Division of General Motors.

Mr. Jacobson: General Motors is a plant. If we are rendering service as a common carrier to General Motors, I think the Commission would like to be advised of it.

[fol. 216] Mr. Meinhold: I object to any testimony with respect to a movement from Southgate.

Mr. Bernstein: Sustained.

By Mr. Jacobson:

Q. Have you ever had any complaints from General Motors as to any products you have transported for them?

Mr. Frizzell: I raise an objection to that question. I think we should first establish if he has transported anything for General Motors, and then you can ask that question.

Mr. Jacobson: That isn't the question I asked.

Mr. Frizzell: Read the question.

(Question read.)

Mr. Frizzell: That assumes he has transported for General Motors. That question assumes that fact. So I say the question is improper.

Mr. Jacobson: I will reframe the question.

By Mr. Jacobson:

Q. Have you ever had any complaint from General Motors with respect to any General Motors product you have transported?

Mr. Frizzell: I object.

Mr. Jacobson: I will submit that for a ruling.

Mr. Bernstein: I think he already testified he hauled for General Motors.

Mr. Frizzell: I didn't hear it.

Mr. Bernstein: He has an exhibit here that purports to list the hauls from the Van Nuys plant for Chevrolet.

[fol. 217] **Mr. Frizzell:** I don't think there is any testimony that those were General Motors shipments.

Mr. Jacobson: Do you dispute that Chevrolet is General Motors?

Mr. Frizzell: Not at all. The question is whether or not these are General Motors shipments.

Mr. Bernstein: I think there ought to be a foundation laid.

Exam. Linn: So the record may not get too indefinite, the operating authority of Dallas & Mavis Forwarding Co., Inc., will be marked as Exhibit No. 8 for identification.

(Protestant's Exhibit No. 8, Witness Lee, was marked for identification.)

Exam. Linn: The operating authority of Robertson Truck-A-Ways, Inc., will be marked as Exhibit No. 9 for identification.

(Protestant's Exhibit No. 9, Witness Lee, was marked for identification.)

Exam. Linn: The two-page document, headed in part, "Chevrolets out of the Van Nuys plant", will be marked Exhibit No. 10 for identification.

(Protestant's Exhibit No. 10, Witness Lee, was marked for identification.)

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Mr. Jacobson: I offer them at this time.

Mr. Bernstein: Those exhibits will be admitted.

[fol. 218] (Protestant's Exhibits Nos. 8, 9, and 10, Witness Lee, were received in evidence.)

Mr. Jacobson: That is all.

Cross examination:

By Mr. Meinhold:

Q. Will you point out on Exhibit 9 wherein you claim authority to transport automobiles from Raymer?

A. Yes. "New automobiles and new trucks, in initial movements, from Maywood, California", as a point, which gives us, under the commercial zoning, a three-mile link, which takes us into the commercial zone of Los Angeles; Van Nuys being in Los Angeles.

Q. Is Van Nuys a separately incorporated community?

A. No, it is not, as I understand it.

Q. Do you regard the provision here with respect to points and places within one mile of Maywood as a limitation?

A. Not on the Maywood, California, authority, no. That is the same as if you listed additional points along with Maywood, California.

Q. What is the approximate distance of Raymer from Maywood?

A. The miles?

Q. Yes.

A. I really don't know.

Q. With reference to Exhibit No. 10, did all of these cars move in driveaway service?

A. No. They were all in truckaway service.

[fol. 219] Q. I notice on several occasions just one vehicle moved on certain days. Did you move that single unit on one piece of equipment?

A. That is likely the date that we received the vehicle.

Q. So that it doesn't mean that you may have moved only one?

A. It doesn't mean it was shipped that day as one vehicle on one truck. Likely it was consigned with other vehicles for a load.

Q. For whom were these shipments made?

A. For whom were they made?

Q. Yes.

A. The government paid the freight.

Q. Who ordered you to pick up the shipments?

A. Someone of the General Services Administration.

Q. The government?

A. Yes.

Q. You are transporting at the present time for the Chrysler Corporation?

A. Yes. We are a common carrier. We transport for anyone.

Q. For whom are you transporting from Los Angeles automobiles and trucks in initial movements?

A. We do that for the Chrysler Corporation.

Q. The Chrysler Corporation only, is that correct?

A. I think this Exhibit No. 10 would be initial movement. That would have to be for the government, would be Chev- [fol. 220] rolet cars.

Q. Excluding government shipments, would all of your shipments have been exclusively for Chrysler?

A. I don't recall, but most likely the majority would be.

Q. You don't recall any other shippers?

A. Well, I don't know. I think we have moved a Studebaker or two from the Studebaker plant, but our volume is with the Chrysler Corporation.

Q. And you offer the Chrysler Corporation truckaway and driveaway service?

A. Yes.

Q. I understood you to say that you had a surplus of equipment at the present time?

A. Yes, we do.

Q. Did you indicate the volume of the movement for the first six months of this year, or would you, if you could?

A. I think we could. We have an exhibit here for the Arizona points.

Q. Your total?

A. I don't believe I have the total.

Q. Do you know what it was for last year, 1955?

Mr. Jacobson: Just into Arizona?

Mr. Meinhold: No, the total.

A. The total number of vehicles?

By Mr. Meinhold:

Q. The total volume moved by you, total number of vehicles [fol. 221] hicles moved by you.

A. I couldn't give you that from memory, no.

Q. But it was greater last year, was it not, than it has been for this year for a corresponding period?

A. I would say probably it was a little greater, yes.

Q. Just a little greater last year than this year?

A. Yes.

Q. Your answer is "Yes"?

A. Yes.

Q. Do you own your own equipment?

A. Yes.

Q. Do you lease any equipment?

A. Yes, we lease a few power units.

Q. To what extent do you lease units, that is, what percentage of your movement is in leased vehicles?

A. We own all of our trailer equipment.

Q. I should have said "power units".

A. The power equipment would run perhaps, oh, maybe 18 or 20 per cent.

Q. Are those power units owner-operated units, the ones that you lease?

A. Are they what?

Q. Owner-operated.

A. We just lease the equipment. We put the driver on.

Q. You employ your regularly employed drivers to operate [fol. 222] ate those units?

A. Yes. They are regular employees.

Q. What is the relationship between Dallas & Mavis and Robertson Truck-A-Ways, if any?

A. Dallas & Mavis Forwarding Co. owns all of the stock of Robertson Truck-A-Ways.

Mr. Meinhold: That is all.

Mr. Jacobson: One other question.

Redirect examination.

By Mr. Jacobson:

Q. Did you ever have occasion to move any shipments to Arizona in initial movement from General Motors?

A. Yes, we have.

Q. From where?

A. Southgate.

Q. How recently was that?

A. I think the last movement was within the last ten days or two weeks.

Q. Was that on a government bill of lading or for General Motors?

A. That was for General Motors.

Q. On the government shipments referred to on the exhibit, who called you to tell you when and where you could get the cars released?

A. That information would come from the Chevrolet plant.

Q. Would your company be willing to enter into any [fol. 223] reasonable agreement with the Southern Pacific or PMT to utilize their facilities in order to give the needed service to Chevrolet at Raymer?

Mr. Johnson: I object to the question as leading and highly suggestive.

Mr. Jacobson: That is the only way I can ask it.

Exam. Linn: It is probably a condition that the Commission could not rely upon in handling this application.

Mr. Jacobson: That is all.

Recross examination.

By Mr. Meinhold:

Q. You stated that you had moved some units for General Motors from the Southgate plant?

A. Yes, there has been a movement.

Q. Pardon?

A. Yes.

Q. What were the circumstances in connection with those movements?

A. What were the circumstances?

Q. Yes. Were you requested by General Motors to move those units?

A. Yes. We wouldn't have moved them without their request.

Q. How many units did you move?

A. I think the last shipment was four vehicles, three or four.

Q. The last shipment?

A. Yes.

[fol. 224] Q. When was that?

A. I think it was in the last couple of weeks.

Q. When did you move units from General Motors plant at Southgate before that?

A. I can't give you any date.

Q. Can you give us an approximate date?

A. Well, yes. I would say within the last two years.

Q. Were those movements made on a bill of lading executed by General Motors Corporation?

A. Yes. Any cars we move from there would go on General Motors bill of lading.

Q. Were those movements made in truckaway service?

A. Yes.

Q. That movement of four units was made in truckaway service?

A. Yes, sir.

Mr. Meinhold: That is all.

Mr. Jacobson: That is all.

(Witness excused.)

Mr. Jacobson: I will call Mr. Hadley.

D. P. HADLEY was sworn and testified as follows:

Direct examination.

By Mr. Jacobson:

Q: State your name, please.

A. D. P. Hadley.

Q: Where do you reside?

[fol. 225] A. Newport Beach, California.

Q: What is your business or occupation?

A. Transportation of motor vehicles.

Q: The Hadley Auto Transport is a corporation?

A. Yes.

Q: What is your position with the corporation?

A. President.

Q: As such, you are familiar with the entire operation of the company?

A. I am.

Q: At what point does your company maintain facilities, Mr. Hadley?

A. Long Beach, California.

Q: At that location what do you have?

A. We have ten acres, paved and fenced yard, with complete shops, and offices, and all facilities necessary to operate.

Q: At what other location do you have facilities?

A. At Milpitas, California.

Q: At that location what do you have?

A. We have nine acres, most of which is paved, and all fenced, with shops and offices, and a fuel supply, and all facilities necessary for the operation.

Q: Do you maintain facilities at any point in Arizona?

A. We have a terminal, relay station and terminal at Wickenburg, Arizona.

[fol. 226] Q: Do you also maintain facilities at Phoenix, Arizona?

A. No.

Q: You have facilities at Wickenburg?

A. Yes.

Q. I will show you one three or four-page document, entitled "Permit No. MC-112391, Hadley Auto Transport", and ask you if that is the permit now held by Hadley Auto Transport Company?

A. It is.

Q. It authorizes the transportation of automobiles, trucks, and so forth, between those plants and places in Los Angeles in initial movement by truckaway to all points and places in the State of Arizona?

A. Yes.

Q. Are you conducting such a service?

A. Yes, regularly.

Q. With what degree of regularity?

A. Well, we operate every day, from eight to ten hours a day, in the State of Arizona.

Q. Do you cover the entire State of Arizona?

A. Yes.

Q. What cars do you principally haul?

A. Ford and Mercury.

Q. Under contract arrangement?

A. Yes.

[fol. 227] Q. Do you have any contract with any other builder of automobiles in the Los Angeles area?

A. We have a contract with Ford, Mercury Division, and Nash, and the Packard Motor Company.

Q. Are you familiar with the Chevrolet plant at Raymer?

A. Yes.

Q. Are you familiar with the fact that they move automobiles and trucks to points and places in Arizona?

A. Yes.

Q. Would you transport their vehicles to all points and places in Arizona covered by your authority?

A. We would.

Q. How many units of equipment does your company own and operate at the present time?

A. 134.

Q. Are those all owned or leased?

A. 24 are leased.

Q. Are those trucks and trailers particularly adaptable to the transportation of motor vehicles?

A. Yes.

Q. Approximately how many vehicles do you move into Arizona monthly?

A. About 900.

Q. Are all the points that you serve on the railroad of the Southern Pacific?

[fol. 228] **A.** Into Arizona?

Q. Yes.

A. No.

Q. Does your company render service to dealers along the northern route, which is the Santa Fe Route?

A. Yes.

Q. You also render service to points outside the municipalities in the various communities in the State of Arizona?

A. Yes.

Q. In fact, do you offer a service to all dealers in the State of Arizona?

A. Yes.

Q. Have you available facilities to transport additional units of equipment between Los Angeles County and Arizona?

A. Yes, sir.

Q. And if General Motors, Chevrolet Division at Raymer, were agreeable to entering into a contract with you for the transportation of their vehicles to all or any portion of Arizona, would you entertain such a proposal?

A. Yes.

Q. And you have the facilities to render such a service?

A. We do.

Q. Did I ask you, is your equipment fully occupied at the present time?

A. No.

[fol. 229] **Q.** Could you handle additional business with the equipment you have?

A. Yes.

Q. Have you the financial ability to acquire additional equipment if necessary?

A. We do.

Mr. Jacobson: That is all.

Cross examination.

By Mr. Meinhold:

Q. Mr. Hadley, will you please point out in your certificate wherein you claim to have authority to transport automobiles and trucks from Raymer to points in Arizona?

A. The first paragraph on page 2, "from points other than Long Beach in Los Angeles County, to points in Arizona, Nevada, New Mexico, and Utah, with no transportation for compensation on return except as otherwise authorized."

Q. Thank you. Where is the Ford plant situated in the vicinity of Los Angeles?

A. Long Beach.

Q. Where is your Mercury plant situated?

A. Los Angeles.

Q. And Nash?

A. El Segundo.

Q. And Packard?

A. Packard moved out in a secondary movement, came [fol. 230] from the east out.

Q. So your initial movements are for Ford, Mercury and Nash?

A. Yes.

Q. Do you have facilities adjacent to the Ford plant at Long Beach?

A. No, we do not.

Q. Do you at Milpitas?

A. We have a terminal in Milpitas, but not adjacent to the Ford property.

Q. How far away is it?

A. A mile.

Q. Is Nash presently assembling automobiles at El Segundo?

A. No.

Q. How long since it has been?

A. Some time in the latter part of 1955.

Q. Are the units that are leased operated by the owners?

A. Yes. We own the trailers. They own the power units and we own the trailers.

Mr. Meinhold: That is all.

Mr. Bernstein: That is all. You are excused.

(Witness excused.)

Mr. Bernstein: Mr. Jacobson, do you want this document in as an exhibit?

OFFERS IN EVIDENCE

Mr. Jacobson: Yes. I would like to offer it as the next number in order.

[fol. 231] Mr. Bernstein: This document, entitled "Permit, No. MC-112391, Hadley Auto Transport, a corporation, Long Beach, California", will be marked as Exhibit No. 11.

The one-page document entitled, "Between 600 and 800 automobiles and trucks hauled from Los Angeles County to following points in Arizona each month", will be marked as Exhibit No. 12.

These documents may both be received in evidence.

(Protestant's Exhibits Nos. 11 and 12, Witness Hadley, were received in evidence.)

Mr. Jacobson: I will call Mr. Boner.

JAMES D. BONER was sworn and testified as follows:

Direct examination.

By Mr. Jacobson:

Q. State your name.

A. James D. Boner—B-o-n-e-r.

Q. Where do you reside, Mr. Boner?

A. San Gabriel, California.

Q. What is your business or occupation?

A. Partner in B. & H. Truckaway Company, which is located in Maywood, California, and we are in the business of transporting automobiles and motor vehicles.

Q. I show you a two-page document entitled, "Permit, No. MC-107230", and ask you if that is the permit under which your company is authorized to transport motor ve-

[fol. 232] hicles between the Raymer plant and all points and places in the State of Arizona?

A. It is.

Q. How many units of equipment does your company have at the present time?

A. We have 22 trucks and 21 trailers.

Q. And you have authority to transport in initial movement to all points and places in the State of Arizona?

A. Yes.

Q. At the present time what is the condition of your operation?

A. We are operating four trucks and trailers at the present time for lack of business.

Q. Who is your principal customer?

A. The Studebaker-Packard Corporation.

Q. Are they assembling in the Los Angeles area at the present time?

A. No. They ceased operation of assembling 30 days ago.

Q. Have you ever called to the attention of the traffic department of the Chevrolet plant the authority and facilities you have?

A. I have.

Q. Have you offered to enter into a contract for the transportation of their motor vehicles from Raymer to all points and places in the State of Arizona?

A. Yes, I have.

Q. On how many occasions have you called that to their [fol. 233] attention?

A. I called on Mr. Lilinthall about six years ago, and then in the last 60 days I called on him again.

Q. Are you ready, able and willing to render such service?

A. Yes.

Q. Have you the facilities to do so?

A. Yes.

Q. Do you need business at the present time?

A. Yes.

Mr. Jacobson: That is all.

Cross examination.

By Mr. Meinhold:

Q. Do you still have a contract with Studebaker-Packard?

A. Yes, I have.

Mr. Meinhold: That is all.

Mr. Bernstein: Do you want this document in evidence?

Mr. Jacobson: Yes.

Mr. Bernstein: This two-page document, entitled, "Permit; No. MC-107230", may be admitted in evidence as Exhibit No. 13.

(Protestant's Exhibit No. 13, Witness Boner, was received in evidence.)

[fol. 234]

PROTESTANTS' EXHIBIT 10

REPRESENTATIVE LIST OF SHIPMENTS BY ROBERTSON TRUCK-A-WAYS, INC., LOS ANGELES, CALIFORNIA FROM CHEVROLET VAN NUYS PLANT, VAN NUYS, CALIFORNIA

[fol. 235] ROBERTSON TRUCK-A-WAYS, INC.

CHEVROLETS OUT OF VAN NUYS PLANT,
VAN NUYS, CALIFORNIA

<i>No. Cars</i>	<i>Date</i>	<i>Destination</i>
1	7-25-55	North Island, San Diego, Calif.
1	7-25-55	North Island, San Diego, Calif.
1	7-25-55	North Island, San Diego, Calif.
1	7-25-55	North Island, San Diego, Calif.
1	7-25-55	Boulder City, Nevada
1	1-5-56	Phoenix, Arizona
1	1-5-56	Las Vegas, Nevada
1	1-5-56	Florence, Arizona
1	2-2-56	Holbrook, Arizona
1	2-7-56	Boulder City, Nevada
1	2-7-56	Sacaton, Arizona
1	2-13-56	Coolidge, Arizona
1	2-21-56	Flagstaff, Arizona
1	2-24-56	Phoenix, Arizona
1	2-24-56	Phoenix, Arizona
1	2-27-56	Parker, Arizona
1	2-28-56	Parker, Arizona
1	2-28-56	Tucson, Arizona
1	3-5-56	White River, Arizona
1	3-5-56	Tucson, Arizona
1	3-5-56	Tucson, Arizona
1	3-8-56	White River, Arizona
1	3-16-56	Phoenix, Arizona
1	3-18-56	Nogales, Arizona
1	3-23-56	Ogden, Utah
1	3-23-56	Ogden, Utah
1	5-9-56	Phoenix, Arizona
1	6-26-56	Boulder City, Nevada

[fol. 236]

PROTESTANTS' EXHIBIT No. 12

BETWEEN 600 AND 800 AUTOMOBILES AND TRUCKS HAULED FROM LOS ANGELES COUNTY TO FOLLOWING POINTS IN ARIZONA EACH MONTH:

✓ AJO	MESA
BENSON	NOGALES
✓ BISBEE	✓ PARKER
BUCKEYE	PHOENIX
CASA GRANDE	✓ PRESCOTT
CHANDLER	SAFFORD
CLIFTON	SAN MANUEL
COOLIDGE	✓ ST. JOHN
✓ COTTONWOOD	✓ SPRINGVILLE
DOUGLAS	TUCSON
DUNCAN	✓ WICKENBURG
FLAGSTAFF	WILLCOX
✓ GLENDALE	✓ WILLIAMS
GILA BEND	✓ WINKELMAN
GLOBE	✓ WINSLOW
✓ HOLBROOK	YUMA
✓ KINGMAN	

FACILITIES LOCATED IN LOS ANGELES COUNTY AND ARIZONA:

GENERAL OFFICE, DISPATCH OFFICE AND SHOP LOCATED AT 21732 SO. SANTA FE AVE., LONG BEACH

STORAGE YARD LOCATED AT 700 HENRY FORD AVE., LONG BEACH

STORAGE YARD LOCATED AT 5565 E. SLAUSON AVE., LOS ANGELES

DRIVER RELAY STATION LOCATED AT WICKENBURG, ARIZONA

NO RECORD OF ANY TRAFFIC MOVING FOR GENERAL MOTORS

Check marks handwritten.

[fol. 239]

Plaintiff's Exhibit 3**BEFORE THE INTERSTATE COMMERCE COMMISSION****DOCKET No. MC-78787 (Sub 37)**

[Title omitted]

Transcript of Hearing—February 20, 1957

226 Old Mint Building,
Fifth and Mission Streets,
San Francisco, California.

Met, pursuant to notice, at 9:30 a.m.

BEFORE:

F. ROY LINN, Examiner.

• • • • • • •

[fol. 240] R. K. BOOTH was sworn and testified as follows:

• • • • • • •

[fol. 241] Exam. Linn: Very well, will you indicate the order in which the exhibits should be numbered, beginning with the Exhibit No. 1?

Mr. Johnson: Exhibit 1 is the report of decision of the Interstate Commerce Commission describing operations of Pacific Motor Trucking Company.

Exhibit 2 is a copy of permits and recommended reports and so forth, issued to PMT in connection with its contract carrier operations.

Exhibit 3 is a map exhibit.

Exhibit 4 is a drawing of the Oakland Chevrolet Plant No. 1 and Southern Pacific Company's and Pacific Motor Truck Company's transportation facilities.

Exhibits Nos. 5 and 6 are aerial photographs of the Oakland plant of the Chevrolet Division of General Motors.

Exhibit 7 consists of six photographs of PMT equipment.

Exhibit No. 8 is a document entitled "Pacific Motor Trucking Company Truckaway Transit Time (Days) To [fol. 242] Points In States Proposed To Be Served From General Motors Corporation Plants In California."

Exhibit 9 is a drawing of the Raymer Chevrolet plant.

Exhibits 10 and 11 are aerial photographs of the Chevrolet Raymer plant.

Exhibit 12 is a drawing of the South Gate General Motors Corporation plant, and so forth.

Exhibits 13 and 14 are aerial photographs of the South Gate Chevrolet plant.

Exam. Linn: These several exhibits may be marked for identification.

(Applicant's Exhibits Nos. 1 to 14, inclusive, Witness Booth, were marked for identification.)

Direct examination.

By Mr. Johnson:

Q. Will you proceed with your statement, Mr. Booth?

A. My name is R. K. Booth and my business address is 110 Market Street, San Francisco 5, California.

I have been employed by Pacific Motor Trucking Company since January, 1935, in various capacities, including Manager of Equipment, District Manager, Assistant to the Vice President, General Manager, and Vice President. In my position as Vice President, which I have held since October, 1954, I am directly in charge of all of Company's operations and report directly to its President.

[fol. 243] The pending application Docket No. MC-78787, Sub. 37, was filed at the request of General Motors so as to make PMT's contract carrier service available to these assembly plants with respect to the balance of their respective distribution territories. In other words, this extension involves service to present and prospective dealer locations not covered by authority previously granted to or sought by PMT.

In the interest of clarity, I will discuss the application more specifically as it relates to each of the assembly plants. Before doing so, however, I should refer to an exhibit which has general application. At our request, we have been furnished by General Motors with a designation of the points involved in the pending application where it presently has a Chevrolet or Buick-Pontiac-Oldsmobile dealer or dealers. On the basis of this information, I have had a map prepared on which each of these points has been indicated by a green circle and the sources of supply shown by the references M, R, and S representing the Melrose, Raymer, and South Gate plants, respectively. This map has been marked for identification Exhibit 3.

General Motors owns two assembly plants in the city of Oakland, California. Plant 1, commonly known as the [fol. 244] Melrose plant, was located on the rail line of the Southern Pacific Company and placed in operation in 1914. Its assembly operations are confined to Chevrolet automobiles. Plant 2 situated about three and one-half miles from the Melrose plant, was opened in 1920 and is also served by the Southern Pacific. It assembles trucks for the Chevrolet Motor Division and for GMC Truck Division, these products being separately identified and distributed by the respective divisions as Chevrolet and GMC trucks.

The application in this proceeding asks authority to transport in interstate or foreign commerce, new automobiles, trucks and buses, except trailers, in initial movements, in truckaway or driveaway service, over irregular routes from the sites of General Motors-Chevrolet plants in Oakland, California, to all points and places in Arizona, Idaho, Nevada, New Mexico, Oregon, Utah, and Washington, except to points and places in Oregon and Nevada which are stations on the rail lines of the Southern Pacific Company and Carson City, Hawthorne, Minden, Austin, Tonopah, and Yerington, Nevada.

As I have previously stated this application contemplates an extension of operations which were initiated by PMT's predecessor in 1929. The operations acquired by PMT in 1935 embraced a radial distribution area of approximately 75 miles, including movements, in interstate or foreign commerce, to docks in Oakland, Alameda and San Francisco.

[fol. 245] While PMT sought "grandfather" rights for these operations, the Commission in PACIFIC MOTOR TRUCKING CO., common carrier application, 34 M.C.C. 249, 295-96, held them exempt under Section 203 (b)(8) and they have been continued under this authority. The original intrastate operations, as well as those established subsequently have been conducted under Contract Carrier Permit No. 38-570 issued by the California Public Utilities Commission in 1935. A copy of this permit which authorizes operations throughout the state is reproduced on the last page of my Exhibit 2. These original operations have been expanded throughout the years.

While highway distribution of Chevrolet vehicles from the Oakland plants to California points now normally involves the entire area north of San Luis Obispo and Tulare, PMT is also called upon to transport them to widely scattered points throughout the state, including Los Angeles, Chino, Long Beach, Whittier, Pomona, Burbank, and Hollywood. California, with a population of almost fourteen million, naturally absorbs a substantial part of the production of these plants. PMT transported approximately 66,182 Chevrolet vehicles from Oakland to California points including ports, in 1955 and 29350 in the six months ending June 30, 1956.

With respect to interstate operations; Permit No. MC-78787, Sub 23, dated June 20, 1944, authorizes truckaway and driveaway service by PMT of new automobiles, trucks and buses, restricted to initial movements over irregular [fol. 246] routes, from Oakland, California, to Hawthorne, Nevada, and points and places in Nevada which are stations on the rail lines of the Southern Pacific Company. Permit No. MC-78787, Sub 31, dated June 21, 1955, grants similar authority to Carson City and Minden, Nevada. There are presently pending before the Commission, pursuant to favorable recommended reports applications by PMT seeking an extension of such an authority to points and places in Oregon which are stations on the rail lines of the Southern Pacific Company (Docket MC-78787, Sub 34) and to Austin, Tonopah, and Yerington, Nevada (Docket MC-78787, Sub 35).

Mr. Cronon: May I interrupt for some information at this point? Would you like us to wait until the statement is completely read before we make any objection to evidence or would you like for the objections to be made to the matters as they arise?

Exam. Linn: Well, that is a matter I prefer to leave up to counsel.

Mr. Cronon: All right, then. The next paragraph that Mr. Booth is about to read, I would like to make an objection at the end of the paragraph, if Mr. Booth would just hesitate there.

Mr. Jacobson: At this point, then, I was going to ask the same question. I move to strike the testimony with respect to the movement of cars in the state of California in the volume set forth on page 5 just testified to, on the [fol. 247] ground it's incompetent, irrelevant and immaterial and not germane to any issue in this case. It involves intrastate traffic.

Mr. Johnson: May I be heard, Mr. Examiner?

As I understand it, Mr. Jacobson is objecting to the statement on sheet 5. Yes, that is a part of the normal history of the over-all operations of applicant in a proceeding such as this. Information as to volume of traffic handled to points within California or to other points is relevant, bearing on its existing service, its capacity to handle additional units of traffic. It will be directly related to the volume of units which are expected to be available to a maximum potential basis to the destination points involved in this application.

Exam. Linn: That is sufficient. Motion denied.

Continue to read.

A. (Continuing) During the twenty-two year period PMT has operated under contract with the Chevrolet Division of General Motors from Melrose, it has provided a specialized service integrated and coordinated to the fullest possible extent with plant operations and we can make similar service available to the additional territory in the pending application.

Mr. Cronon: I move that the last sentence be stricken on the ground that it's a conclusion of the witness not supported by any evidence so far.

Exam. Linn: Motion denied.

[fol. 248]. A. (Continuing) At the Melrose plant, PMT established a receiving yard in 1935 immediately adjacent to assembly facilities, where its employees are stationed to arrange for the most expeditious flow of outbound vehicles. With expanded volume in recent years, additional space has been acquired. This includes a parcel of property located across Church Street from the receiving yard acquired several years ago and nearby property on Foothill Boulevard in 1956.

My Exhibit 4 is a drawing showing the entire productive and transportation facilities utilized in the operation of the Melrose plant. Arrows on the print indicate the movement of finished products from the General Motors yard directly into PMT's receiving yard through a discharge gate, at which point PMT accepts delivery under its contract.

Mr. Beardsley: I wonder if the witness is qualified to testify with respect to General Motors operations and could stand cross-examination respecting the possibility of getting to and from the General Motors plant.

Mr. Johnson: Mr. Examiner, I would be perfectly willing to ask the witness a few questions at this point which would indicate his qualifications.

Exam. Linn: If you desire, you may go ahead.

By Mr. Johnson:

Q. Mr. Booth, have you ever had occasion to examine the facilities at Chevrolet Plant No. 1?

A. Yes, I have.

[fol. 249] Q. Are you familiar, on the basis of personal observation, with the normal operation there?

A. I am. In fact, I was directly responsible for laying out the yard which we now use at the facilities in 1935.

Mr. Johnson: That is all.

Exam. Linn: You may continue.

Objection overruled.

A. (Continuing) There is no other facility available at or adjacent to the plant for the normal release and receipt

of units consistent with its functional arrangement. All finished Chevrolet vehicles to be transported by highway are turned over to PMT at this discharge gate. They include not only automobiles assembled at the Melrose plant, but also Chevrolet trucks which are assembled at Plant 2 and brought over to Melrose by General Motors employees.

The information provided by Exhibit 4 is supplemented by Exhibits 5 and 6, consisting of two aerial photographs taken on August 28, 1956, which clearly portray the Melrose operation.

We presently have 65 employees assigned to the operation at Melrose. There is a superintendent in over-all charge of the trucking operations at this facility, who maintains daily contact with Chevrolet Motor Division representatives concerning the volume of movement and controls the loading of equipment and dispatch to final destination. A mechanic is stationed at our receiving yard to perform minor repairs and servicing our trucking equipment, thus avoid- [fol. 250] ing interruptions which might be experienced. Major repairs are provided at PMT's Oakland garage, which is situated near downtown Oakland. Our present normal complement of employees also includes an assistant superintendent, a dispatcher-clerk, a clerk, 50 drivers, and 10 additional employees engaged in loading and yard work.

We maintain a substantial volume of equipment assigned to Melrose which is dedicated to its service. As of December 31, 1956, 40 power units and 35 non-power units were based at our facilities there. This is special equipment adapted to truckaway service for new motor vehicles of General Motors.

My Exhibit 7 consists of six photographs illustrating different types of equipment used in our contract carrier operations for General Motors. The first photograph illustrates a truck and semi-trailer unit loaded with six passenger vehicles. The next picture illustrates a truck and semi-trailer combination loaded with four passenger vehicles. The next picture illustrates a tractor and partially enclosed semi-trailer which carry four units. The next picture shows Pacific Motor Trucking Company power unit 387-D and semi-trailer 619 under load, which again is a combination involving four units being carried on the semi-

trailer and none on the power unit. The next picture illustrates another truck and trailer combination with two units loaded on the truck and two units on the trailer. The last photograph shows a combination truck and semi-trailer rig [fol. 251] with two units loaded on the truck and two on the semi-trailer.

Facilities owned by PMT and used in the Melrose operation, as of December 31, 1956, represent an investment of \$333,420. Of this total, transportation equipment constitutes \$314,892, and the balance of \$18,527 is made up of such items as garage tools, furniture, fixtures and miscellaneous items.

In addition to close coordination effected at the plant operating level the management of PMT maintains contact with the Chevrolet Motor Division of General Motors. This cooperative working arrangement involves such matters as information concerning production schedules, which enables us to make necessary arrangements for adequate equipment and personnel at the Melrose plant, and advance information of a confidential character concerning prospective model changes, essential to timely modifications of our equipment. The Chevrolet Division also keeps us advised as to precautions to be followed in handling its vehicles, thus minimizing losses in transit and promoting the delivery of its products to dealers in the best possible condition. These comments are also applicable to operations at Raymer which is controlled by the Chevrolet Motor Division of General Motors.

It is my considered judgment that PMT can expand this service to handle additional traffic from Melrose to destination points included in this proceeding. In this connection, I naturally have had occasion to consider various factors affecting such an undertaking.

Mr. George D. Cron, Traffic Manager of the Chevrolet-Oakland Division, has supplied me with the volume of motor vehicles which actually moved from Melrose to various points included in this application in the year 1955 and the first six months of 1956. Summary figures for Chevrolet vehicles, by states, are as follows:—

Mr. Jacobson: Just a moment. I want to object to this on the grounds that apparently the applicant proposes to

call the witness Cron, who is more familiar with the factual situation, and who will be interrogated by the various protestants on the method of movement and so forth. I believe the evidence should come in through that witness. It's hearsay twice removed with this man.

Mr. Handler: No foundation documents available, so far as has been indicated.

Mr. Johnson: Mr. Examiner, it's true that Mr. Cron will be available as a witness with respect to the detail of this information. He will be available for complete cross-examination. Mr. Booth, in considering a request to provide adequate operations, naturally, in the normal conduct of his duties, has to be advised by a representative of the potential shipper of traffic.

Exam. Linn: If it's understood that Mr. Cron will confirm these figures, the witness may proceed.

[fol. 253] Mr. Jacobson: May I make this observation at this time, in view of the ruling? May I ask the counsel if this witness is prepared to testify in detail concerning the method of movement of these cars and a particular point to which they move? If not, it seems to me that the witness who has the documentary evidence should be available for cross-examination.

Exam. Linn: Apparently the witness's testimony is that these production figures are among the factors which he considered in arriving at the conclusion that they can handle additional traffic from Melrose.

Mr. Jacobson: For only that purpose?

Exam. Linn: That is the tenor of the exhibit, as I take it.

Mr. Johnson: That is correct. We are not offering this to show that this amount actually did move. We are showing that this is the information received and on which he acted in making his judgment that he could handle the traffic.

Mr. Jacobson: Then it's definitely objectionable, if they don't assert that these are actual figures.

Exam. Linn: I assume they will assert that at the proper time.

Mr. Jacobson: He just said that they are not putting that in in that manner at this time.

Mr. Johnson: We are making the offer for the purpose of showing information on which he acted. A later witness will testify as to actual movement, based on his own personal knowledge and records, and he will be available for complete cross-examination.

Exam. Linn: The witness may proceed.

Objection overruled.

A. (Continuing) Summary figures for Chevrolet vehicles, by states, are as follows:

State	Year 1955	6 Mos. ended June 30, 1956
Idaho	5,292	2,558
Nevada	122	42
Oregon	5,401	2,666
Utah	41	12
Washington	24,805	12,260
Total	35,661	17,538

The maximum of potential traffic may be compared with the total of 67,106 vehicles which PMT moved in 1955 from Melrose and 29,782 vehicles moved in the first six months of 1956.

My study also has developed an estimate of the transit times required for truckaway movement to all points actually receiving units from the Melrose plant in 1955 and the first six months in 1956 and to all other points having Chevrolet dealers in the area involved in the pending application. The latter includes dealer points in Arizona and New Mexico. This information is contained in my Exhibit 8. The transit times shown are based on compliance with applicable speed laws and hours of service regulation of the Commission.

[fol. 255] Mr. Handler: I object to that and ask that it be stricken on the ground that no foundation has been laid to show that this witness is competent to testify with respect to the distances and time in transit required and the method of operations, whether by single or dual drivers to those points.

Exam. Linn: I would suggest that possibly the objection might be timely when Exhibit 8 is offered.

Mr. Handler: May it be noted now, then, that I will have an objection to Exhibit 8?

Exam. Linn: Yes.

A. (Continuing) To handle such traffic, it would be necessary for PMT to augment its equipment, storage facilities, and personnel devoted to service at Melrose. We are willing and able to assume such a commitment. Actual details with respect to such an expansion of service necessarily would have to be worked out with General Motors after this application has been determined by the Commission.

The second assembly plant included in the pending application is at Raymer, California, which is within the corporate limits of Los Angeles. This General Motors plant assembles Chevrolet motor vehicles, and contract carrier service has been provided from it by PMT since it opened in 1947.

The application asks authority to transport, in interstate or foreign commerce, new automobiles, trucks, and buses, except trailers, in initial movements, in truckaway or drive-[fol. 256] away service over irregular routes from the site of the General Motors-Chevrolet plant at Raymer to all points and places in Arizona, Idaho, Nevada, New Mexico, Oregon, Utah, and Washington, except points and places in Arizona which are stations on the rail lines of Southern Pacific Company.

This involves an extension of existing PMT service. Intrastate operations are authorized by outstanding authority of the Public Utilities Commission of California which is reproduced on the last page of Exhibit 2. In addition, PMT has presently pending before the Interstate Commerce Commission an application in Docket No. MC-78787, Sub 36, seeking truckaway and driveaway authority from Raymer to points and places in the State of Arizona which are stations on the rail lines of Southern Pacific Company.

My testimony concerning the specialized service of PMT at Melrose is applicable to Raymer and I shall try to avoid repetition in describing the Raymer operation.

Mr. Cronon: May the record show that I have the same objection to the last sentence as I advised earlier in the proceeding, on account of it being a conclusion of the witness? The motion is that it be stricken.

Exam. Linn: I am not certain I follow you, counsel.

Mr. Cronon: Earlier in Mr. Booth's testimony I moved that a certain sentence be stricken on the ground that it was a conclusion of the witness, and I would like to make the [fol. 257] same motion here and ask that that sentence be stricken on the same ground.

Mr. Johnson: The earlier objection was overruled, so I don't suppose you want to hear from me?

Exam. Linn: Which sentence are you referring to at this point?

Mr. Cronon: It starts on page 11: "My testimony concerning the specialized service".

Exam. Linn: Yes, the record may stand as made. Objection overruled.

A. (Continuing) Exhibit 9 shows facilities provided by General Motors, Southern Pacific, and PMT at Raymer. Arrows on this drawing indicate the flow of outbound assembled vehicles, which are to be transported by highway, from the General Motors storage yard to PMT's receiving yard. The latter is immediately adjacent to the General Motors plant site at Raymer and is so placed as to permit an uninterrupted movement of assembled vehicles. PMT accepts delivery of such vehicles under its contract at the gate shown in the northwest corner of its receiving yard.

To permit visual understanding of this operating layout, we had aerial photographs taken on January 18, 1957, which are included in Exhibits 10 and 11.

We normally have a substantial number of employees assigned to Raymer. The present staff totals 77 and consists of the following:

[fol. 258]

Supervisory and Clerical

Superintendent	1
Dispatcher-Clerk	1
Truck Dispatcher	1
Clerk-Typist	1

Operating and Equipment Maintenance

Drivers and Yardmen	68
Mechanics	5

The duties of these employees are similar to those stationed at the Melrose plant, which I have already described.

In order to insure dependable and adequate service, we also assign a number of transport units to Raymer. As of December 31, 1956, 62 power units and 76 non-power units were based at our facilities there. Our investment in this equipment is \$588,052.49 and we also had a small investment of \$2,190 in tools and miscellaneous items. The equipment is similar to that shown in Exhibit 7.

Expansion of PMT's existing service so as to handle additional traffic from Raymer to the destination points involved in the pending application can be accomplished without any difficulty.

In this connection, I have secured from Mr. George R. Lilinthal, Traffic Manager of the Chevrolet-Los Angeles Division, a statement of units which actually moved by rail [fol. 259] from Raymer to this territory during 1955 and the first six months of 1956. Summary figures for individual states are as follows:—

Mr. Johnson: I suggest that the reporter just copy those figures into the record, in the interest of saving time, if that is satisfactory.

Exam. Linn: The matter may be handled in that manner.

(The following material is made a part of the record at the request of the Examiner:

<i>State</i>	<i>1955</i>	<i>1st 6 mos. 1956</i>
Arizona	2,453	1,034
Idaho	2,454	1,182
Nevada	885	396
New Mexico	165	63
Oregon	295	856
Utah	6,113	3,378
Washington	473	556
	<hr/> 12,838	<hr/> 7,465)

A. (Continuing) This maximum of potential traffic involves a relatively modest increase in that handled by PMT during the same periods. PMT moved 108,485 vehicles in 1955 and 52,852 vehicles in the first six months of 1956.

PMT presently has surplus yard capacity which would accommodate all of any such increase. We are willing and able to provide such additional personnel and equipment as might be necessary to meet General Motors' requirements.

[fol. 260] Estimated transit times for PMT service from Raymer to various destinations included in the pending application are shown in my Exhibit 8.

General Motors also owns an assembly plant in southern California at South Gate, shown on my Exhibit 3, which commenced operations in 1937 and assembles Buick, Pontiac, and Oldsmobile vehicles.

The application in this proceeding requests authority to transport, in interstate or foreign commerce, new automobiles, trucks, and buses, except trailers, in initial movements, in truckaway or driveaway service over irregular routes from the site of the General Motors plant at South Gate, California, to all points and places in Arizona, Idaho, Montana, Nevada, Oregon, Utah, and Washington.

As indicated previously, this application contemplates an extension of contract carrier operations provided by PMT since plant operations started. Intrastate operations are conducted under the permit issued by the California Public Utilities Commission which appears on the last page of my Exhibit 2. PMT has interstate authority under Permit No. MC-78787, Sub 27, dated April 21, 1950, to provide truckaway and driveaway service from Los Angeles to Calexico and San Ysidro, California, and this authorization includes South Gate, which is within the terminal area of Los Angeles as defined by the Commission in Docket No. MC-C-4.

[fol. 261] PMT has provided a specialized service, coordinated with operations of the South Gate plant, during the twenty years it has operated under contract with the Buick-Oldsmobile-Pontiac Division of General Motors. Similar service will be made available to additional points involved in the pending application.

Mr. Cronon: At that point I would like to interpose the same objection, on the grounds that it is a conclusion stated by the witness.

Exam. Linn: The testimony will stand. Objection overruled.

A. (Continuing) My Exhibit 12 is a drawing showing the facilities used in operation of the South Gate plant, including those necessary for rail and highway transportation. Arrows on this print indicate the movement of outbound assembled vehicles from the General Motors' yard into PMT's receiving yard. PMT accepts delivery under its contract at the gate shown at the terminus of Seminole Avenue. The location of this receiving yard immediately adjacent to the outbound yard of the South Gate plant permits an uninterrupted flow of vehicles.

The information provided by Exhibit 4 is supplemented by Exhibits 13 and 14, consisting of two aerial photographs taken on January 18, 1957.

Mr. Johnson: Which is shown in Exhibit 12?

The Witness: Shown in Exhibit 12.

Mr. Johnson: Correct.

[fol. 262] A. (Continuing) They give a clear picture of the South Gate operating layout.

We presently have 48 employees assigned to South Gate, consisting of the following:

Supervisory and Clerical

Superintendent	1
Dispatcher-Clerk	2
Truck Dispatcher	1

Operating and Equipment Maintenance

Drivers and Yardmen	42
Mechanics	2

Their functions are similar to those of employees stationed at the Melrose plant, which I have explained previously.

A substantial volume of transport equipment is normally assigned to South Gate service. As of December 31, 1956, 57 power units and 57 non-power units were based at our facilities there. This represented an investment of \$451,060.88, and we had an additional investment of \$1,504.76 representing tools and miscellaneous items. This equipment

is adapted to truckaway service for new motor vehicles of General Motors and the character of the units is shown in Exhibit 7.

Expansion of PMT's existing service so as to handle additional traffic from South Gate to the destination points involved in the pending application is feasible. This statement reflects consideration of various factors, including [fol. 263] potential traffic volume and transit times.

In this connection, I have secured from Mr. Joseph Singler, Traffic Manager of Buick-Oldsmobile-Pontiac Assembly Division at South Gate, a statement of Buick-Oldsmobile-Pontiac units which actually moved from South Gate to this territory during the first three months of 1955. Summary figures for individual states are as follows:—

Mr. Johnson: May this matter be copied into the record as though read?

Exam. Linn: It may be copied.

Mr. Jacobson: For the purpose of the record, may the objections I urged to the first list of figures be likewise considered as an objection to the proposed traffic out of the Chevrolet Raymer plant, on the ground that the evidence of the witness is preferable, because I have reference to a transcript in a previous case that—or I will have reference?

Exam. Linn: It may be understood that there is objection and the ruling is the same in the instant of Raymer and South Gate as it was to the Melrose plant.

(The following material is made a part of this record at the direction of the Examiner:

State	Vehicles
Arizona	1,114
Idaho	247
Montana	36
[fol. 264]	
Nevada	550
Oregon	3,118
Utah	221
Washington	2,857
	<hr/> 8,143)

A. (Continuing) This maximum of potential traffic may be compared with a total of 28,112 vehicles which PMT moved in the first three months of 1955 from South Gate.

PMT presently has adequate yard capacity to handle such an additional volume of traffic. We are willing and able to provide such additional personnel and equipment as may be necessary to expand our existing service at South Gate.

Estimated transit times from South Gate to points and places in the entire destination territory covered by this application are provided in my Exhibit 8.

Before concluding, I want to stress the emphasis given to safety in the conduct of PMT's operations, including the contract carrier service under consideration.

PMT is a member of the Truck Owner's Association of California, which is a part of American Trucking Associations, Inc., and this enables us to participate in the latter's safety programs. Our Manager of Equipment holds a membership in the Equipment and Maintenance Council of American Trucking Associations, Inc. He also is a member of the Society of Automotive Engineers. Our Director of [fol. 265] Safety holds a full membership in the American Society of Safety Engineers, and is a member of the American Trucking Associations' Council of Safety Supervisors. In addition, PMT holds a membership in the American Trucking Associations' Section of Safety and a membership in the National Safety Council, Commercial Vehicles Section. Its Safety Director has been designated as the recipient of the 1955 Marcus A. Dow Memorial Award for outstanding contributions to the field of motor vehicle safety engineering.

Major importance has been attached to safety in training our supervisory and operating employees under the guidance of our Director of Safety.

We also have an effective program of preventive maintenance under our Manager of Equipment. This provides for the servicing and inspection of each unit of equipment at 2000-mile intervals until it is completely overhauled at some point between 150,000 and 165,000 miles, depending upon the type of unit involved, and whether it is a gas or diesel unit. At Oakland, South Gate, and Raymer, small

repair shops are maintained for minor repairs and major repairs are made at the PMT's well-equipped shops in Oakland and Los Angeles.

These efforts have been productive. Our accident frequency dropped from 12.2 to 5.27 accidents per 100,000 miles from 1947 to 1956.

PMT's service in the transportation of new automobiles, [fol. 266] trucks, and buses, in initial movements, from the Melrose, Raymer, and South Gate plants is highly specialized and requires personalized attention, which we have provided. The physical facilities, devoted to this service, which I have described, have been designed so as to provide full coordination with General Motors' operations at these plants, and our personnel assigned to these operations are qualified by training and experience to give the close attention essential to maintaining an uninterrupted distribution of the plants' products.

Mr. Cronon: At that point may I make my same objection, upon the ground that it's a conclusion, applied to the paragraph at the beginning of page 17 and continuing over to sheet 18?

Exam. Linn: Objection overruled.

A. (Continuing) Our truckaway and driveaway services are confined to General Motors. This dedication of our efforts to a single shipper has enabled us to meet its requirements throughout the years with maximum efficiency. We will continue in the same manner in the extension of service contemplated by the pending application.

Exam. Linn: We will be in recess briefly.

(Short recess.)

Exam. Linn: The hearing will be in order.

By Mr. Johnson:

Q. Mr. Booth, you testified that the pending application requested authority to transport new automobiles, trucks [fol. 267] and buses, except trailers, from South Gate. Is that a correct statement?

A. That is not a correct statement. The application itself calls for authority to transport new automobiles, except

trailers, from the site of the General Motors Buick-Oldsmobile-Pontiac plant at South Gate, California, to all points and places in the states of Arizona, Idaho, Montana, Nevada, Oregon, Utah and Washington, and that is the authority which we seek.

Q. Turning to your Exhibit No. 8, which deals with truckaway transit time, what factors and what matter did you consider in preparing this study?

A. Well, the primary factor is the mileage, and we computed the mileage from the three assembly plants to the destination points, considering the over-all terrain and operating conditions with which we are generally familiar, we arrived at a miles per hour which we thought was suitable for the haul of equipment. From that, we determined how many transit time days would be required to make the movement by truck from any of the plants.

Exam. Linn: Off the record.

(Discussion off the record.)

Exam. Linn: On the record.

OFFERS IN EVIDENCE

Mr. Johnson: I offer Exhibits 1 through 14.

* * * * *

[fol. 268] Cross examination.

By Mr. Jacobson:

Q. Mr. Booth, do I understand from your last statement that as of this time you have no guarantee of any particular traffic from the General Motors at any of these three plants if this authority is granted?

A. General Motors wants to have the opportunity to use highway service to the territory in the West served by [fol. 269] these plants. The exact volume which will be tendered to us for the territory in question has not been finally determined, as far as PMT is concerned.

Q. Insofar as General Motors plants are concerned at the present time, isn't it a fact that all of the traffic that is moving to these points is moving via rail?

A. That is my understanding.

Q. And that rail is the Southern Pacific as the originating carrier, is that correct?

A. That is correct.

Q. And to each of these points in these states where the Southern Pacific doesn't serve, it's an interline operation with another rail carrier, is that correct?

A. That is right.

Q. To your knowledge, to any points in these states, is there any highway carrier serving any of these plants at the present time, with regularity?

A. No, there is not.

Q. Well, is it the intent of the PMT and the Southern Pacific to divert, in view of the desire of General Motors that the traffic go by highway carrier, to divert the rail traffic to the PMT highway service if this permit is granted?

Mr. Johnson: I object to that question as being misleading. The shipper controls the traffic. The shipper does the diverting.

Mr. Jacobson: You have qualified your witness here for [fol. 270] all of these exhibits. What, then, is the purpose of showing that certain thousands of cars move to a certain point, if they are now moving rail?

Exam. Linn: Will you read the question, Mr. Reporter, please?

(Question read.)

By Mr. Jacobson:

Q. From Southern Pacific?

Exam. Linn: Are you able to respond, Mr. Booth?

The Witness: Yes, I think so.

A. PMT doesn't have any option in this matter. General Motors has come to us and said they want the availability of highway service to this territory in question. We have no election whether we divert the traffic or not. They are the ones who make that decision.

By Mr. Jacobson:

Q. Well, where do you expect to get the traffic from, if not from the rail carrier that is now serving the points?

A. The shipper with whom we do business, General Motors, has in mind diverting some of the traffic from the present movement by Southern Pacific and by other rail lines to a highway service operated by Pacific Motor Trucking Company.

Q. As I understand it, the shipper has requested you to inaugurate a truck service on PMT to serve all of these points that are now being served via rail, is that correct?

A. All the territory served by the General Motors plants in this western territory.

[fol. 271] Q. Did you make any investigation to find out whether or not Robertson has served the Raymer plant to points proposed by this application under their authority?

A. From my knowledge of the plant layout, I would say they have not, because it would be very difficult for them to accept vehicles—

Exam. Linn (interrupting): The question was whether you had made any investigation, Mr. Booth.

A: No, I haven't made any investigation.

By Mr. Jacobson:

Q. You implemented your answer. Will you explain what you meant by the latter part of your answer in which you said it would be practically impossible for them to render service to the Raymer plant number under the present facilities. I am now referring to your Exhibit No. 9.

A. If you will refer to Exhibit 9, Mr. Jacobson, you will see that the location of our yard is in the direction of flow of the outbound finished products, our receiving gate was located at General Motors' own suggestion when this plant was constructed.

Mr. Jacobson: I move that that be stricken.

[fol. 272] By Mr. Jacobson:

Q. Will you restrict yourself to knowledge that you have?

A. I know that. At the time this plant was constructed.

we considered two or three possible locations for our receiving yard. This—

Exam. Linn: Let me suggest that if counsel is able to frame a more specific question—the question now before the witness is so general that he may speak at great length on the general subject.

By Mr. Jacobson:

Q. Referring to your Exhibit No. 9, that property on which General Motors' plant is constructed was purchased or acquired from the Southern Pacific Company, is that correct?

A. That is my understanding, yes.

Q. You had something to do with it, didn't you?

A. Not the purchase of the property, no.

Q. Well, it was all Southern Pacific property?

A. I understand that a large section of this property was purchased by Southern Pacific. Just how much of it, I am not sure.

Q. You mean by General Motors?

A. It was purchased by Southern Pacific from some outsider and some of it was resold to General Motors.

Q. Do you know any portions of the General Motors facility at Raymer that aren't on property that was acquired directly from Southern Pacific?

[fol. 273] A. Well, I don't want to try to answer that, Mr. Jacobson. I don't know if it's a fact that they bought all of this property from Southern Pacific.

Q. Didn't you heretofore testify in a previous proceeding that the property was acquired from Southern Pacific?

A. I don't recall whether I did or not.

Q. Well, adjacent to the facilities of General Motors is property that is owned by Southern Pacific that is occupied and utilized by PMT, is that correct?

A. That is correct.

Q. And it's immediately adjacent to that property, isn't that correct?

A. That is correct.

Q. And isn't it a fact that you can not get to the rail

loading platform or to a public highway from the discharge gate of the Chevrolet plant at Raymer without going over the property of Southern Pacific and PMT?

A. That is right.

Q. Who owns the property that is now occupied by PMT at the Raymer plant?

A. It's owned by Southern Pacific Company.

Q. And is it under lease to PMT?

A. It is, yes.

Q. Who keeps the books and records of the PMT operation of motor vehicles for General Motors out of the Raymer plant?

[fol. 274] A. Our accounting department.

Q. Your accounting department or the Southern Pacific?

A. It's actually done by accountants paid by Southern Pacific Company, and we are billed for such services by the Southern Pacific Company.

Q. In other words, the books and records are kept by the Southern Pacific Company in their offices, isn't that correct?

A. Yes, for us, and we pay them for the work.

Q. What access is there to a public highway, if any, from the General Motors plant to—

Mr. Jacobson: Strike that.

By Mr. Jacobson:

Q. Referring to the BOP plant at South Gate, which is your Exhibit No. 12, is the situation there the same with respect to the ownership of property adjacent to General Motors as it is at Raymer?

A. Quite similar. The property which we occupy, which is labeled "Pacific Motor Trucking Company", shown on Exhibit 12, is owned by Southern Pacific Company, leased to General Motors and re-leased by General Motors to us.

Q. Is that adjacent to the delivery portion of the General Motors plant?

A. That is correct. The delivery gate at the corner of Alameda and Seminole Avenues lets onto our receiving yard.

Q. So, in order to get to the public highway from the delivery gate of General Motors at South Gate, you must [fol. 275] go over the property of Southern Pacific and PMT, is that correct?

A. That is right, yes.

Q. Thus far you have never authorized any carriers to go over your property to the receiving gates at either Raymer or South Gate, have you?

A. No, we haven't.

Q. Likewise, is it necessary to go over the property of Southern Pacific and PMT at South Gate to get to the rail dock?

A. Well, it depends on who wants to get there. If you want to switch cars in there, you have to go over Southern Pacific tracks.

Q. How can you get there without switching cars into the plant?

A. Well, somebody might want to get into—walk into the rail loading dock—is that what you mean?

Q. I am not talking about walking. I am talking about moving automobiles.

A. Well, the automobiles to the rail loading docks are loaded into cars which move over Southern Pacific track, that is right.

Q. So any facilities for movement by either rail or truck out of the South Gate plant, the same as out of the Raymer plant, must go over the property of Southern Pacific, which is leased to the PMT?

A. This plant is served by Southern Pacific and PMT—

Q. (Interrupting) Just answer my question, will you, please?

A. That is right, yes.

[fol. 276] Q. What is the situation with respect to the plant at Oakland? Is it a similar situation?

A. It's a similar situation with respect to the serving of the plant, it's served by Southern Pacific track. The gate through which highway vehicles are delivered lets onto a yard leased by Pacific Motor Trucking Company from the Southern Pacific Company. We also lease at that location, though, property from two or three other people.

Q. Who leases from two or three other people?

A. Pardon?

Q. Who leases from two or three other people?

A. We do, Pacific Motor Trucking Company does.

Q. You mean property adjacent to this plant?

A. Nearby the plant. If you will refer to—

Mr. Johnson: Exhibit 4.

A. (Continuing) —Exhibit 4, you will note that across Church Street from the PMT paved parking space, adjacent to the plant itself, is some additional property, which is marked "PMT Paved Parking Space". There is also some additional PMT paved parking space on Foothill Boulevard at the corner of Sixty-eighth Avenue and Foothill Boulevard.

By Mr. Jacobson:

Q. That property isn't necessary to be utilized for the purpose of picking up automobiles from the delivery gate of General Motors, is it?

A. No, but it's necessary to our operations, that is part [fol. 277] of our operating property.

Q. In other words, you use it for garage and storage and so forth?

A. The property on Foothill is used for truck storage and the property across Church Street is used both for automobile and truck storage.

Q. But no truck carrier, or rail, can have access to the delivery gates of the General Motors factories at either one of the three locations without going over the property of Southern Pacific or PMT or getting their consent, is that right?

A. They can't reach the regular delivery gate of the plants at any of the three locations without going over the PMT yard.

Q. Without getting your consent?

A. That is right. These yards are PMT yards.

Q. And in the past, to your knowledge, you have never given anybody that consent?

A. No, we haven't.

Q. If the traffic which is now moving rail to points other than those directly served by Southern Pacific is diverted

to highway traffic, it will in turn divert traffic from other rails that are now serving the territory you don't serve, won't it?

A. That is correct, yes.

[fol. 278] Q. All passenger cars. The two clients that I am representing, Mr. Booth, in this proceeding are motor common carriers of automobiles, and from time to time they have transported from other manufacturing plants and assembly plants General Motors products. They would both like very much to perform this same service out of the plants that you are seeking to serve. In the event they were successful in persuading the traffic department of General Motors to tender them some traffic and the traffic department of General Motors, or whoever is in charge or has the say-so, should request you to let my clients cross your property and get to the plant and load those vehicles, would your company honor that request and permit my clients' trucks to cross your property?

Mr. Johnson: I object to that as being highly speculative and beyond the realm of proper cross-examination.

Mr. Smith: I don't think it's beyond the realm of his proper cross-examination. This gentleman discussed in de-[fol. 279] tail that the property adjacent to the loading plants was his property and on cross-examination by Mr. Jacobson he said that he wouldn't permit any other carrier to cross his property.

Exam. Linn: Are you asking the witness whether he would yield an easement permanent or temporary or trip easement?

Mr. Smith: Yes, that is my question.

Exam. Linn: Or sell the property or what other possible arrangement?

Mr. Smith: Just give them permission to cross the property.

Exam. Linn: I don't think the question is sufficiently clear. Would you frame it with respect to a given situation so that you might be able to get an answer?

Mr. Smith: I don't want to argue the point. I will abide by your observation.

Exam. Linn: If you have a concrete business proposition to offer, I can see where—

Mr. Smith: I am just an attorney. I can't speak for my clients on any concrete business proposition they might have to offer.

That is all.

Exam. Linn: Off the record.

(Discussion off the record.)

Exam. Linn: On the record. We will adjourn one hour for lunch.

(Whereupon, at 12:15 p.m., Wednesday, February 20, 1957, the hearing in the above-entitled matter was recessed until 1:15 p.m. of the same day.)

[fol. 280] Afternoon Session—1:15 p.m.

Exam. Linn: The hearing will be in order.

Will you continue with the cross-examination of Mr. Booth.

Cross examination.

By Mr. Handler: -

Q. Mr. Booth, would we be correct in assuming that if this application were granted there would be a one-way haul and that there would be no traffic to be transported back to California?

A. That is correct, yes.

Q. At the present time does PMT perform any truckaway service of automobiles from any of these assembly plants other than to points in California?

A. Yes, we perform truckaway service into Nevada.

Q. And to rail stations in Nevada?

A. Rail stations and certain off-rail points in Nevada which we are authorized to serve.

Q. And that is why those particular points were eliminated from this application?

A. That is correct.

[fol. 281] By Mr. Handler:

Q. Mr. Booth, you said you determined the time in transit from computing average miles per hour that the equipment could run. What was that mileage per hour?

A. Well, the miles-per-hour figure which we have used runs out to a basic figure of 25 miles per hour to Pacific Northwest points and to Nevada and it averages 20.2 miles per hour.

To the Arizona points we used 30 miles per hour, and the average speed works out to 25.7 miles per hour. That reduction is caused by the allowance for eating time and stops en route.

[fol. 282] Q. Then, you took the total mileage from Oakland, for example, to Boise, Idaho, and divided it by that mile per hour you used into the Northwest?

A. That is right, yes.

Q. Now, are you proposing that the equipment will operate 24 hours a day?

A. Yes. The equipment would operate through—I happen to have the actual schedule here from Melrose to Boise.

Q. All right.

A. Contemplating a departure from Melrose, say, at 5:30 p.m. on Monday, we would arrive at Boise at 2 a.m., Wednesday, operating by McDermitt.

Q. You wouldn't deliver at 2 a.m., would you?

A. No. We had to have some starting place on this schedule of times—

Q. (Interrupting) Answer the question. Would you deliver at 2 a.m.?

A. No, I said no. I said we have to have some starting time.

Q. How would you be able to operate 24 hours a day in compliance with the safety regulations and the hours-of-service regulations?

A. There are two ways to do it. One is through the use of relay drivers and the other is through the use of sleeper cabs.

Q. Which way are you proposing to do it?

A. We propose to use relay drivers.

[fol. 283] Q. By the way, in your prepared statement I did not see that you indicated how many units of equipment you have located at Oakland. If it's there, I can't find it. Can you tell me—?

Mr. Johnson: It's there.

Mr. Handler: Will you refer, please, counsel, to the page where it's indicated?

The Witness: It's on page 7, a short paragraph there.

By Mr. Handler:

Q. Forty power units and thirty-five non-power units. And are those predominantly used in California?

A. Yes, predominantly they are. Some of them operate in Nevada.

Q. Do you know how many additional units of equipment [fol. 284] ment you were to purchase for the proposed operation, to be stationed at Oakland?

A. Assuming that we had the entire volume, we could arrive at an equipment requirement, which I have here.

Q. For clarification, are you assuming that the entire volume is going to move by truck and all of it be diverted from rail?

A. Based on that assumption, that is the equipment figure which I will now give you.

Q. All right.

A. From Melrose, we would require 115 truckaway units.

Q. Additional?

A. Additional units, yes.

Q. Do you know what investment would be required for that?

A. About \$2,400,000.

Q. Have you the same figures for the Southern California points?

A. Yes. For South Gate we would require 114 additional units, with an investment of about \$2,400,000.

And at Raymer 46 additional units with an investment of about \$960,000.

Q. What is the total investment figure for your equipment?

A. Those figures which I read off total, in round figures, \$5,740,000. We have some standby equipment at present which would serve to reduce this investment to around \$5,000,000.

Q. Is it your understanding that all the traffic will be diverted to truck operation?

[fol. 285] A. No. The extent to which General Motors will use this service will depend on their own shipping requirements.

Q. Well, they have given you some indication as to what proportion of the whole traffic will go by rail and what portion will go by truck, haven't they?

A. No, there are certain points where we definitely know that service may be required. Boise is probably one of such points.

Q. Required by what, truckaway?

A. Where service would be required by General Motors, truckaway service.

Q. Assuming, along with the original assumption we made, that all the traffic would go by truck, do you know how many rail cars would be put out of service by substituting the motor truck equipment?

A. No, I do not.

Q. You haven't made any computation on that?

A. No, I haven't.

Q. I take it, a number of rail cars are now utilized in this rail service. Is that not true?

A. I don't really know anything about that.

Q. Is it your understanding that all the traffic now moving from these points for General Motors is moving via Southern Pacific or PMT?

A. No; this traffic is moving to the territory in question, covered by the application, by rail service entirely.

[fol. 286] Q. That is Southern Pacific, isn't it, originally, as the initiating carrier?

A. Initially by Southern Pacific, yes.

Q. To the extent there is a diversion to truck, there is obviously going to be a reduction in the use of rail cars, that follows, does it not?

A. That follows, yes.

Q. Are you going to establish any new terminals as a result of the granting of this application, should it be granted?

A. No; we have terminals at these three plants in question now.

Q. Where are you going to keep your relay drivers, just at roadside stations?

A. I misunderstood you. I thought you meant a terminal at the plant.

Q. No; I mean terminals in the territory.

A. In a technical sense, it will be what are called terminals at the relay points. Those terminals are designated by agreement with the unions.

Q. Have you established such an agreement yet?

A. We have from California into Portland, Oregon, but not into other territory.

Q. It will be necessary to negotiate those with the unions in such territories as Idaho and Montana and other states?

A. That is right.

Q. And at those particular locations what facilities will [fol. 287] you have?

A. Well, they will be actually merely an interchange point where there will be a driver based who will accept the truckaway equipment from the incoming driver upon arrival and proceed to another relay point or to destination.

Q. Are you going to establish any buildings or greasing stations or repair shops or offices in any of these points?

A. That is not our present intention, no.

Q. That is not your plan?

A. No.

Q. Now, Pacific Motor Trucking Company, as indicated, is a common carrier of general commodities in some of these western states, is it not?

A. Yes.

Q. Does it haul automobiles or general freight for General Motors Corporation under its published tariffs?

A. It does, but not in territory covered by this application.

Q. Does it operate into or out of any of the plants of General Motors Corporation that you seek to serve in this application?

A. It does, yes.

Q. What type of traffic is it?

A. There is a very small amount, generally speaking, of parts traffic out of the Melrose plant. There is a larger amount of traffic out of the, parts traffic out of the, Raymer plant. To my knowledge, there isn't any movement of parts [fol. 288] out all out of the South Gate plant.

Q. What about parts into these plants, or materials or supplies? Doesn't PMT perform service in that connection?

A. There is no substantial volume moved by PMT into those plants.

Q. There is some volume, however?

A. There is some shipments moving into the plants, yes.

Q. The bulk of the inbound movement to the plants, of the parts from which the automobiles are made, comes in by Southern Pacific rail service?

A. That is my understanding.

Q. In accordance with the published rail tariffs of the Southern Pacific Railway Company?

A. That is, I presume so, yes.

Q. You have indicated that the traffic you will haul if this application is granted will be on truck rates that you may establish pursuant to the Commission's authorization having to do with contract motor carriers. Is that true?

A. That is right.

Q. It won't be the rail rates?

A. It will be contract rail rates published by Pacific Motor Trucking Company.

Q. Your authority in California is general commodity authority, isn't it, from stations to the rail lines?

A. Maybe some of it is. There may be some exclusions. [fol. 289] Q. I had understood all automobiles were excluded, since you had a pending application from these stations—

A. A pending contract carrier application.

Q. Do you have pending now authority to Oregon points, to transport automobiles?

A. There is another witness who can answer that question. I am not sure.

Q. Are you transporting any vehicles for General Motors Corporation to points in Oregon by truck?

A. No, we are not.

Q. If that authority exists, you haven't used it, or General Motors hasn't used it?

A. That is correct.

Q. You haven't, you are sure, hauled any automobiles to Portland, Oregon?

A. That is right.

Q. Do you, in filing your minimum rates with the Interstate Commerce Commission, publish or set forth the actual rates you charge or the minimum rates?

Mr. Johnson: I object to that question as being improper cross-examination, beyond the scope of the direct and not properly an issue in this case.

Mr. Handler: I think it will be an issue before we get this case decided.

Exam. Linn: What is its relevancy?

[fol. 290] Mr. Handler: Well, the relevancy is that if the carrier files only minimum rates, there is no way by which the actual rates could be known and if they vary from the published rates of the railroad we have a situation whereby virtual dual operations, as between common carrier truck, common carrier rail and contract carrier truck, preferences and prejudices can result contrary to the provisions of the Act.

Exam. Linn: Well, the witness may answer the pending question. I suppose that trouble of a serious nature may develop on any succeeding question along the same line.

By Mr. Handler:

Q. Do you recall the question?

A. I don't know the answer to the question.

Q. Your answer is you don't know?

A. That is right.

Mr. Handler: Is there going to be a witness here who will know?

Mr. Johnson: Read the question.

(The reporter read as follows:

Q. Do you, in filing your minimum rates with the In-

terstate Commerce Commission, publish or set forth the actual rates you charge or the minimum rates?"")

Exam. Linn: The witness says he doesn't know.

Will you continue.

Mr. Handler: I didn't know that he had said that.

By Mr. Handler:

Q. I asked you about hauling as a common carriers, that [fol. 291] is, PMT, interstate. May I ask you the same question with respect to California? Do you haul any automobiles for General Motors as a common carrier in California?

A. No, we do not.

Q. That is all contract carriers?

A. That is right.

Mr. Handler: I meant to ask counsel if there would be a witness who can answer the question about the proposed rate schedule.

Mr. Johnson: No, that is not our present intention.

By Mr. Handler:

Q. Mr. Booth, I would like to ask you, if I may, about the Melrose plant. If I understand your testimony, it is in the city of Oakland?

A. That is right.

Q. You have indicated in your direct testimony there are two plants in Oakland. Is that correct?

A. Yes.

Q. You only offered a map and photographs, as I understand it, of one plant. Is there only one plant that we need to consider here, one plant which is located in Oakland, as being involved in this application; the one that you show on Exhibit No. 4?

A. Our service is all performed from Plant No. 1.

Q. That is the one that is mapped out on Exhibit No. 4, is it?

A. That is right.

Q. So the other plant is not involved, is that right?

[fol. 292] Mr. Johnson: Do you mean in the application?

Mr. Handler: Yes.

Mr. Johnson: I think the application speaks for itself, the application reference to both plants, to serve both plants.

By Mr. Handler:

Q. Well, you haven't testified to any other one, have you? If you have, I didn't hear it:

A. No; I said our service was out of Plant 1.

[fol. 293]

By Mr. Bieneman:

Q. I will ask you the direct question, sir. Is it your testimony that you do not know whether or not the Southern Pacific serves any of these other manufacturers of automobiles in Los Angeles?

A. That is right. I am under oath and I wouldn't want to say that they do.

Q. Let's put it this way: Do you know of any plants there that they do not serve, any of these automobile manufacturers?

A. I don't know.

Mr. Johnson: He has all ready answered this question two times; saying he doesn't know. Now, it seems to me that ought to be sufficient.

Mr. Bieneman: Mr. Examiner, I don't think we need to argue that point. I think the witness obviously must have some knowledge on the subject, and to say he doesn't know is hardly an adequate answer.

Mr. Johnson: I object to that gratuitous comment of counsel.

[fol. 294] We will be perfectly willing to supply an answer to your question. I don't know myself. If you would like to know, we will provide it.

Mr. Bieneman: I would like to develop that matter on the record. If you would have a witness who will be in a position to answer those questions, I would like to develop it through him.

Mr. Johnson: You can call any witness, so far as you want.

Mr. Bieneman: That I don't think, answer my question, and it's not in conformance with what you just said. You

said you would be willing to supply that information. If you will tell me what witness will be available to supply that information, I will be glad to defer my questions on that matter.

Mr. Johnson: I will provide it to you by stipulation. I am not going to put a witness on to provide it. I stand on my objection to your questions to this witness, on the ground of repetition. He has answered twice that he doesn't know.

Exam. Linn: Is there anything further in the way of comment?

Mr. Bieneman: Oh, yes, indeed, sir.

That would be satisfactory. May we have that understanding, then, that before the close of the hearing counsel will by stipulation indicate which of those plants in the Los Angeles area are served by the Southern Pacific Railroad?

Exam. Linn: That is a matter for counsel to arrange between themselves.

Will you continue with your cross-examination?

Mr. Bieneman: I think you are right, sir, but I would like to have an indication on the record if I am correct in my understanding of counsel's statement.

Exam. Linn: Counsel, do you have means at hand by which you could produce evidence? If you would desire and could agree upon something and offer a stipulation, that would be satisfactory also.

Let's get on with this witness now.

By Mr. Bieneman:

Q. If I were to ask you similar questions as to the service provided by the Southern Pacific to other automobile manufacturers in the San Francisco area, would your answer be the same?

A. There are no other automobile manufacturers in the San Francisco area — I will stand corrected on that. There is a Ford plant at Milpitas, and again I don't know the answer as to whether Southern Pacific serves that plant or not.

Q. I was interested in an answer that you gave on, I

think, both direct and cross-examination, in which you said that the Pacific Motor Truck had no choice with respect to this diversion problem, that the shipper had simply come to you and said that it wanted highway service. Was that right?

A. That is right. We have no choice in diverting traffic controlled by General Motors.

[fol. 296] Q. Did the shipper tell you that unless the Pacific Motor Truck application were filed it would put the traffic on some other truck service?

A. The shipper told us that unless we were successful in giving them a complete offer of service which they desired, they would enter into a proprietary operation, as they are able to do if they desire, or hire some other carrier.

Q. When you say "they told us that", I take it that you mean by "us", that they told the Southern Pacific Railroad that, did they not?

A. And they have told me that, too.

Q. So that you were told, in effect, by the shipper, either that Southern Pacific should provide truck service or, in the alternative, the shipper would find other means, either in private carriage or through some other carrier for hire, is that right?

A. That is right.

[fol. 297] By Mr. Bieneman:

Q. In connection with the statement that was made to you by General Motors concerning their intention to divert traffic to either private truck or independent truck if you didn't do something, is it not a fact that one of the reasons, at least, advanced to you for that intention was the higher cost to General Motors of rail service, having in mind the loading and unloading cost?

A. No, it was not.

Q. All right, sir. What was the reason, if any, that General Motors said they were going to go to a truck operation, regardless of whether you did it or somebody else did it?

A. General Motors wants to place itself in a position equal with its competition. Its competition here in the West

has a highway service available to it, to the entire plant territory. Chrysler has it and Ford has it. General Motors [fol. 298] told us that they wanted to be in the same position.

Q. In other words, your thinking or your understanding from them is simply that they would like to be in a position to use the same type of truck service and to the same territory as Ford and Chrysler do out of the same areas, is that right?

A. They want to be equal to their competition.

Q. Equal service and equal rates?

A. I don't know about the rates.

Q. They don't care about the rates?

A. I haven't discussed the rates at all.

Q. As far as you know, then, the only thing they are interested in is the equal service feature?

A. To have an equal opportunity to use highway transportation with their competition here in the western territory.

[fol. 299] Exam. Linn: The hearing will be in order.

Exhibits 1 to 14 have been previously offered. Is there any objection to their receipt in evidence, or any one of them?

(No response.)

Exam. Linn: Without objections, Exhibits 1 through 14 are received in evidence.

(Applicant's Exhibits 1 to 14, inclusive, Witness Booth, were received in evidence.)

Mr. Frizzell: Mr. Examiner, we have four exhibits to be marked for identification. These exhibits will be offered in connection with the testimony of Mr. Lynch.

Exam. Linn: The record may show a photograph of a passenger automobile marked as Exhibit 15.

The photo of a station wagon as Exhibit 16.

The photo of pickup truck as Exhibit 17.

And a one-page document, a map of the United States, as Exhibit 18.

(Intervenor's Exhibits Nos. 15 to 18, inclusive, "Witness Lynch, were marked for identification.)

Mr. Frizzell: Mr. Lynch, please.

WILLIAM R. LYNCH was sworn and testified as follows:

Direct examination.

By Mr. Frizzell:

Q. Will you give the reporter your name, sir?

[fol. 300] A. William R. Lynch.

Q. What is your business address, sir?

A. General Motors Building, Detroit, Michigan.

Q. What is your occupation?

A. Traffic Director of the Chevrolet Motor Division, General Motors Corporation.

Q. How long have you been traffic director?

A. Since January 1, 1946.

Q. Prior to that time, Mr. Lynch, what did you do?

A. I started with Chevrolet January 16, 1923, in New York City, as traffic representative. From there I went to Tarrytown as assistant traffic manager, assistant traffic manager Flint, Michigan, traffic manager Kansas City, Missouri, traffic manager Norwood, Ohio, traffic manager at Baltimore, Maryland, and I was transferred to Detroit, Michigan, September 16, 1935, as assistant traffic director.

Q. Throughout all this period of employment with Chevrolet you have been engaged in the traffic business?

A. Yes, sir.

Q. When I say "traffic business", you have been dealing with transportation agencies for Chevrolet?

A. That is right.

Q. What is the business of Chevrolet Motor Division, Mr. Lynch?

A. Manufacturer of passenger cars and trucks and chassis.

Q. And, by the way, is Chevrolet part of General Motors?

[fol. 301] A. Yes, sir.

Q. I direct your attention to Exhibit No. 15 which the reporter has marked and I ask you to tell us what that picture represents.

A. That is a 1957 Chevrolet Bel Air sports sedan.

Q. Will you look at Exhibit No. 16 marked for identification and tell us what that is?

A. A 1957 210 Townsman four-door, six-passenger station wagon.

Q. Look at Exhibit No. 17 and tell us what that picture is?

A. That is a commercial cab with box, half-ton job.

Q. Mr. Lynch, do those represent the products manufactured by your company?

A. They do.

Q. Specifically by the Chevrolet Division of your company?

A. Chevrolet Motor Division.

Q. And are those products manufactured in California?

A. They are.

Q. And what are the locations of your operations in California?

A. Van Nuys, California, and Oakland, California.

Q. Mr. Lynch, you say that these pictures of various models are representative. Could you give us any idea as to how many variations there are in the models that you produce?

A. Well, there are so many of them, I wouldn't attempt to even tell you. In our passenger line we have our Bel Air line, we have the 210, we have the 150. Trucks, we have all kinds of trucks with all kinds of options. To tell you how [fol. 302] many, I wouldn't want to.

Q. Have you any idea how many color combinations you have on your automobiles, that are available to the public?

A. Numbers, I can't tell you, but there are many, many.

Q. Would it run into the hundreds?

A. Oh, yes, I would say yes.

Mr. Jacobson: Did you say colors?

Mr. Frizzell: Color combinations. You see, people are very particular today about the colors they buy in their automobiles.

Mr. Jacobson: I didn't know whether you were advertising or what.

By Mr. Frizzell:

Q. Mr. Lynch, in these representative models of automobiles that you have shown by Exhibits 15 and 16 and 17, are there various mechanical options that you can get in these cars?

A. Yes, sir.

Q. Could you give us any idea as to how many mechanical options there are in your line of automobiles?

A. Well, in the passenger line we have power steering, power brakes, air conditioning, all sorts of things like that.

Q. A customer can buy all those on one car or part on a car, through the various combinations of those units that are on an automobile, depending upon the customer's choice, isn't that right?

[fol. 303] Q. Mr. Lynch, I hand you what the reporter has marked Exhibit No. 18, and will you tell us what that exhibit represents?

A. That exhibit represents the location and the normal plant area of the Chevrolet assembly plant system.

Q. What are the named designations on this map? What are these named designations? Are they the location of what?

A. Of the assembly plants.

Q. And these various shaded areas represent what, Mr. Lynch?

A. Their normal shipping area.

Q. From what?

A. From the assembly plant.

Q. The name of the assembly plant located in that particular shaded area, is that right?

A. Right.

Q. Mr. Lynch, do these plants confine themselves just to the assembly of new automobiles?

A. They do.

Q. Where do they get their materials to assemble the automobiles?

A. The major component parts come from the Great Lakes region.

Q. And they are shipped to these various assembly plants by what mode of transport?

A. By rail-carload.

Q. Directing your attention particularly to Oakland and Los Angeles on this map, is that a rail carload delivery? [fol. 304] A: Yes.

Q. For these parts?

A. Yes.

Q. Mr. Lynch, would you tell us what your duties and responsibilities are, as the traffic director of Chevrolet?

A. Well, I administer the transportation and traffic affairs of the Chevrolet Motor Division, and also set its transportation policy.

Q. Do you have anything to do with providing your various plants around the country with adequate transportation service?

A. I do.

Q. Do you or do you not deal directly with transportation companies for that purpose?

A. I do.

Q. Do you, as a matter of fact, set the transportation policies of your company?

A. I do.

Q. Now, who carries out these policies?

A. Traffic managers operating at our plant locations.

Q. And who are the traffic managers, Mr. Lynch, here in California?

A. George D. Cron at Oakland and G. R. Lilinthal at Van Nuys.

Q. Are those gentlemen here with you today at this hearing?

A. They are.

Q. Mr. Lynch, what is the policy of your company in the [fol. 305] delivery of new automobiles from these various assembly plants?

Mr. Jacobson: I object to "various assembly plants" as not being involved in this proceeding. There is a number all over the United States, as shown on this exhibit.

Mr. Frizzell: I submit, Mr. Examiner, that this is a relevant question that the witness should be allowed to answer.

Exam. Linn: The witness may answer.

By Mr. Frizzell:

Q. How do you deliver your automobiles from your various assembly plants?

A. By rail and contract motor carrier.

Q. Mr. Lynch, what is the present distribution of your automobile traffic as between the railroads and your contract carriers?

Mr. Handler: Just a moment.

By Mr. Frizzell:

Q. I am talking now about your national picture.

A. Our national distribution via rail service-truckaway is 83 per cent truckaway and 17 per cent rail.

Q. Mr. Lynch, what is the percentage distribution as between the truckaway operation and railroad operations here at your California plants? First, let's take Oakland.

A. Oakland is 54 per cent truckaway and 46 per cent rail.

Q. And what is the fact with respect to the Van Nuys plant?

A. That is 77 per cent truckaway and 23 per cent rail.

Q. Without mentioning the Van Nuys plant, that is the Raymer railroad designation, is it not?

[fol. 306] A. That is the Southern Pacific designation, that is the way they refer to it.

Q. When reference is made to Melrose, that is with respect to the Oakland designation?

A. Yes.

Mr. Bienenman: These questions and answers as to percentages, are you talking simply about numbers of cars without relation to mileage or anything else?

Mr. Frizzell: Number of automobiles.

By Mr. Frizzell:

Q. These percentages you just gave us are percentages relating to the number of automobiles moved by railroad or by your contract carrier trucks?

A. Automobiles, passenger cars and trucks.

Q. Mr. Lynch, you say that your truck distribution from

these various assembly plants is known as a "contract carrier trucker operation."

A. That is right.

Q. How long have you used that form of transportation from your assembly plants?

A. Beginning with the 1934 model, it was customary prior to that time to permit dealers and other agencies of theirs—

Mr. Jacobson: Just a minute. I want to object to testimony concerning what happened 25 years ago. It's certainly not germane to any issue in this proceeding on the West Coast. I am a little wrong in my years. It's 20 years ago.

[fol. 307] Mr. Frizzell: I think it is, Mr. Examiner. Do you want me to tell you why or do you want the witness to tell you why?

Mr. Jacobson: I am objecting.

Mr. Frizzell: I think the history of this operation is very important.

Mr. Jacobson: The issue here is whether there is a need for the establishment of a new carrier, in the face of existing carriers being in the field at the present time.

Mr. Frizzell: I will agree with you that that is the issue.

Exam. Linn: The witness may answer, but I suggest that he be as brief as possible with respect to the early period.

By Mr. Frizzell:

Q. Go ahead, Mr. Lynch. Tell us the story.

A. We were given this job by our management at the beginning of the 1934 model year and it was taken out of our sales department because we had dealers coming in with all sorts of drivers and causing nothing but confusion at our plant locations, and the traffic department was given this job by a Chevrolet management to go out and organize the distribution of our product via modes of transportation, rail and truckaway. At Tarrytown, for example, we had approximately 90 companies down there, and they were—Anchor Motor Freight at that point was organized and undesirables were weeded out and desirables were—

Mr. Jacobson: (Interrupting): This is certainly not germane to any issue here. What happened at Tarrytown [fol. 308] 20 years ago, before he went with the company in that capacity, is certainly not germane and is not going to benefit the record.

Exam. Linn: Will you reframe the question, Mr. Frizzell?

Mr. Frizzell: I am merely trying to show what the situation was that impelled General Motors to go to this form of transportation, namely, contract carriers. We had a reason for it and I am just asking Mr. Lynch to give us the reason, and it will be very brief.

Exam. Linn: Very well.

A. Well, at that time that was the reason for it. These companies were organized, and we had them adjacent to properties that were ours, in order that they become a part of our distribution system, in order to properly service our dealers. These contract carriers are dedicated solely to Chevrolet's business. We keep them fully informed on our projections months in advance, so that they will have a complete knowledge of what to expect. And we—

By Mr. Frizzell:

Q. Let me just get in there now, Mr. Lynch. In 1934, then, you took control of this traffic for Chevrolet?

A. Right.

Q. What other important change did you make at that time, besides just taking control of the traffic, with respect to the method of delivering your cars?

[fol. 309] A. Will you rephrase your question, Mr. Frizzell?

Q. Did the dealers drive your cars from the plants?

A. Yes.

Q. What did you do about that?

A. We eliminated the dealer coming in for cars.

Q. Then did you continue to drive new automobiles?

A. No.

Q. What change did you make in that respect?

A. We truck them.

Q. Is that your policy today?

A. It is.

Q. These contract carriers, Mr. Lynch, which were formed back in 1934 and 1935 to take on this business, are those contract carriers still serving your company?

A. They are.

Mr. Handler: I object on the ground it's immaterial. Let's get down to California.

Exam. Linn: Objection overruled.

By Mr. Frizzell:

Q. Mr. Lynch, I direct your attention to the plants at Oakland and at Los Angeles. Is the contract carrier which was serving your plant in 1935 still serving your plants there?

A. Correct, it is.

Q. What company is it?

A. PMT.

[fol. 310] Q. Since you have these past 20 years followed the policy of using a single contract carrier at these plants, has that proved to be a satisfactory arrangement for your company?

A. It has.

Q. Mr. Lynch, could you give us a few reasons why you used this so-called contract carrier form of operation?

A. Well, with our volume of, distribution of the volume business that we are in requires an even flow and an efficient flow of our product to our mode of transportation, such as truckaway, and these properties that our truckaway operators have are adjacent to our property. We also keep them fully informed of schedules and our projection for two or three months in advance of our actual production so that they will know and have an exact idea of what is required of them and how the volume will be coming to them. We also keep them fully informed as to any model changes that occur, that require some modification of the equipment in question. Just recently there is a change in the '58 model that is going to take place, that the clearance of the job on the present equipment is going to be quite affected, and we have already had our operators at our proving

grounds in Milford, Michigan, for test loading, we have had subsequent meetings with them as to what was required of the equipment, and the thing is still under negotiation, but it's something that has to be handled immediately, because the equipment has to be modified and our [fol. 311] engineering department has to do something to make the truck fit the job, something is going to have to be done to get it taken care of before we go into the new model. All of those things, in our opinion, make a satisfactory arrangement for Chevrolet in properly disposing of our production.

Q. Did you have representatives of PMT come in and see this new 1958?

A. Yes.

Q. Did you have your other contract carriers in at that time, too?

A. Yes.

Q. Mr. Lynch, do you customarily relay to these trucking companies information with respect to your model changes and keep them abreast of that fact, too?

A. Yes.

Q. Mr. Lynch, could you tell us why you are asking Pacific Motor Trucking Company to extend its operation into this territory here on the West Coast?

A. We are in need of truck transportation. The trend is towards trucking and rail is being eliminated gradually. We do not have available to us at Oakland and Van Nuys a complete coverage such as we have at our other plant locations. We have points out here on the Pacific Coast that are off-railhead. We have a case, if I can cite for the moment, down at St. George, Utah, which is some-sixty [fol. 312] miles from a railhead, where that fellow requires truck service, and we are unable to give it to him because of the restricted rights that our carrier now serving us has. So recognizing the trend, I went to the Southern Pacific people this year, early this year, and told them that it was my understanding that Southern Pacific had a policy that they would not truck to rail points off their rail line.

Mr. Bieneman: May I interrupt there?

Did you mean by "this year" 1957?

The Witness: I meant '56, Walter. That was, when we were out here on our Arizona rights.

A. (Continuing) I served notice to Mr. Peoples.

Q. Who is Mr. Peoples?

A. Vice-president in charge of traffic for the Southern Pacific Railroad. I served notice on him that we were not concerned any longer with the Southern Pacific's policies of not trucking to points off their railroad, that we were in need of a trucking service, and that if PMT could not service the account and give us complete coverage at the Van Nuys and Oakland plants, that then we would have to make other arrangements for the service. And I requested him to make application to the Interstate Commerce Commission to give us that coverage, and he did so at our request.

Q. Directing your attention, Mr. Lynch, to Exhibit No. 18 and the various shaded areas which you testified represented [fol. 313] sent shipping areas of the respective assembly plants indicated thereon, do those assembly plants have available to them a contract carrier service throughout those shipping territories?

A. Yes.

Q. And this territory out here is the only one in the national operation that doesn't have that—

Mr. Jacobson: I object to the leading and suggestive questions, which every question has been.

Exam. Linn: I believe the matter indicated in the question is already of record.

Mr. Frizzell: I will withdraw it.

By Mr. Frizzell:

Q. Have you had any pressure put on you by your management with respect to your transportation services out here?

A. I have.

Q. What is their attitude?

A. Their attitude is that they want complete trucking coverage, and "We have to get it, because we are going to go into the trucking business if we don't."

Q. You mentioned this dealer at St. George. Have any other dealers complained?

A. Boise, Idaho.

Mr. Jacobson: Pardon me. Did you end that statement by saying "we are going in the trucking business"?

Exam. Linn: Read the answer.

[fol. 314] (The reporter read as follows:

"Answer: Their attitude is that they want complete trucking coverage, and we have to get it, because we are going into the trucking business if we don't.")

By Mr. Frizzell:

Q. Just tell us what you mean by that.

A. I mean that we are going to have trucking services available to us on the Pacific Coast so that we can truck automobiles to our customers, the dealers.

Q. When your management tells you that you have a requirement, it's up to you to get that requirement, is it not?

A. It is.

Q. Mr. Lynch, can you give us any further reasons why you prefer to have available to you a truck operation on a contract carrier basis from these two California plants?

A. Well, it's consistent with our policy, and we feel that a contract carrier dedicates his service solely to us, he is not holding out to people in general, and we have assurance, as a contract carrier serving us with a contract, that we have assurance of delivering our automobiles without interruption, that he does not hold himself out to the public in general, and thereby we have that guarantee.

Q. Mr. Lynch, your Exhibit No. 18, you testified represents the shipping areas of your various plants. Is it ever necessary to ship beyond those normal shipping areas?

A. It is.

[fol. 315] Q. Is that a fact out here in California?

A. It is.

Q. Mr. Lynch, can you reach any of this territory that is involved here today from your Kansas City plant?

A. Yes.

Q. Looking at your Exhibit No. 18, could you give us, for the record, what states or parts of states—

A. Well, there is New Mexico, Utah, and Idaho.

Q. So you could make a delivery from your Kansas City plant by truck to at least some of the points that are involved in this application?

A. Yes.

Q. Is it your desire to make deliveries from the Kansas City plant into that normal delivery area of your California plants?

A. No.

Q. Why not?

A. Well, the Los Angeles and Oakland plants represent quite an investment and they are to supply all of the production in the normal area that they are lined up for, and to start depriving it of that area would merely destroy the economics of the plan.

Q. If you diverted any of your production from the California plants over to Kansas City, what effect would that have on your material distribution, parts and material?

Mr. Jacobson: I object to that as incompetent, immaterial [fol. 316] and not germane to any issue in this case.

Exam. Linn: Overruled.

By Mr. Frizzell:

Q. What effect would withdrawing the production of California plants to those plants have upon the production of parts and materials to those plants?

A. To give you an example, if it was necessary for us to transfer St. George, Utah, over to Kansas City, and supply it from Kansas City, and points comparable to that, if we are deprived of the trucking service to reach them, it means that the inbound component parts, the engines, the axles, the sheet metal, the transmissions, et cetera, will be reduced to that extent. Transferring St. George, Utah, over to Kansas City means that in order to reach it, there is various points intermediate to it now that are on rail out of Kansas City that would have to move truckaway because we would be travelling through that territory and, in order to give the trucking company substantial volume, or adequate volume, to reach St. George, we would have to

give him those intermediate points and the railroads would lose that business.

Mr. Handler: I move to strike the answer on the grounds it's based on a non-existent foundation. I haven't heard the witness say yet there had been a change to St. George or even that one was contemplated. You are building up a strong man to knock him down.

Exam. Linn: I understood the question to be limited to [fol. 317] parts and supplies.

Mr. Frizzell: He probably went further than he had to go on the answer. The answer that I was seeking, I think, he gave. I must admit to counsel that there is no evidence that there are any shipments from Kansas City to St. George, Utah, but the witness has testified that that service is available to him if he cares to use it, and if he uses that service, he has given us facts as to what the results from that diversion would be.

Exam. Linn: Perhaps our record is adequate as it now stands.

Mr. Frizzell: I think it is.

By Mr. Frizzell:

Q. Mr. Lynch, why is it that you prefer—well, let me ask you this: Do you as a matter of fact prefer the trucking operations to the rail operations in the delivery of your new automobiles?

A. Absolutely.

Q. Why?

A. It's superior.

Q. In what respects is it superior?

A. Well, we can deliver a better-quality automobile, there is less "manhandling." And certainly in these small communities their facilities are such that a small dealer has to close his business up for half a day to go down and unload a carload of automobiles, and the transit time, everything about it, superior service and we are coming to it.

[fol. 318] Mr. Cronon: Mr. Examiner, I ask that that answer be stricken on the ground that it's too general, it doesn't specify any particular point, any particular railroad service, and it does not leave us in a position to properly

cross-examine this witness as to what facts, if any, underlie his statement.

Mr. Frizzell: I think the answer was responsive.

Exam. Linn: Motion denied.

By Mr. Frizzell:

Q. Mr. Lynch, these other contract carrier operations from the plants around the country, do they have drive away operation in their authorities?

A. Yes, they do.

Q. I think you did testify that your policy is truckaway?

A. That is right.

Q. Why do you ask them to get driveaway authorities?

A. We are producing a line of commercial vehicles, big trucks, some of them have platforms and stakes on them which just don't lend themselves to trucking, and in those cases we permit them to drive them.

Mr. Frizzell: That concludes my direct.

Cross examination.

By Mr. Cronon:

Q. Mr. Lynch, is it true that your division of General Motors has only three assembly plants in California, the ones that have been mentioned here today?

A. No; Chevrolet has only two, Oakland and Van Nuys.

Q. Could you tell us how long ago those assembly plants [fol. 319] were established in California, approximately?

A. Oakland, 1914; Los Angeles, 1948.

Q. What was the first one? I didn't get that.

A. Oakland, 1914 and Los Angeles, 1948.

Q. Has your company followed a policy of decentralizing the assembly of its automobiles?

A. Just what do you mean by that question, Mr. Cronon?

Q. I mean, there was a time when most of your cars were manufactured and assembled right in the state of Michigan, isn't that right?

A. Oh, we have had assembly plants for a good many years. I could give you the—

Q. (Interrupting) Let me put it this way: Isn't it your policy now to distribute your cars from a point which is more centrally located to the distributors whom you want to receive your cars?

A. No, the exhibit here represents our method of distribution, this Exhibit No. 18.

Q. Are you distributing any cars which are assembled in your Detroit Chevrolet plant at all, in the state of California?

A. No, we have no assembly plant at all in Detroit.

Q. Your idea is to distribute them from the state of California?

A. That is correct.

Q. Was there a time when Chevrolet cars moved via rail from points east of the Mississippi?

[fol. 320] A. East of the—to this territory?

Q. Yes.

A. Well, at the conclusion of World War II, when we were converting our plants back from wartime production to automobile business, St. Louis was one of the first plants to get going, and we did have distribution—and we also produce a model at St. Louis called the "Corvette" which we ship out here rail.

Q. Your regular Chevrolet model, however, is not shipped from St. Louis, is it, to California?

A. No, not the regular line of cars.

Q. It may be, Mr. Lynch, that the record indicates that the Southern Pacific Railroad does all of the hauling from your California assembly plants. That is not a fact, is it, as to points, for example, on the Great Northern Railway?

A. Southern Pacific doesn't do any hauling for us.

Q. The railroad?

A. No.

Q. Then, do you mean that out of your California plants to points on the Great Northern, that they move via PMT?

A. No, no. Are you talking about the Southern Pacific trucking our automobiles or railroading them?

Q. Via rail.

A. Oh, yes, Southern Pacific, on all of our volume of business out of here, they ship rail.

[fol. 321] Q. They ship from both plants?

A. That is right.

Q. On shipments which are routed, for example, Santa Fe-Western Pacific-Great Northern to a point like Kalispell, Montana, the Southern Pacific Railroad would only receive a switching haul?

A. That is right, if the Santa Fe received the traffic here it would be only reciprocal switching.

Q. On your traffic moving to southern Pacific Coast territory, to points not served by Pacific Motor Trucking Company, that moves all via rail, doesn't it?

A. Yes.

Q. If I understand your testimony correctly, if this application is granted, you will divert all of the transportation of Chevrolet automobiles and trucks from the present rail movement to movement via Pacific Motor Trucking Company?

A. I didn't say that. I said, what I said was, that we have an immediate need for this service and we will convert immediately a substantial amount of this business, and I said also that the trend is for trucking automobiles and I can see that we are going to go someday a hundred percent truckaway, and I am getting ready for it.

Q. The way you stated it, as I remember it, was that the rail transportation is being eliminated gradually?

A. That is correct.

Q. Now, in-respect to this particular application, what do [fol. 322] you mean by "gradually"? Would it start out by diverting 25 per cent and then diverting 50 per cent to PMT and then 75, or how would you say it?

A. Well, we would most certainly start trucking into Arizona and Utah and Idaho and we would start moving into Oregon via truck and we would gradually—

Q. Eventually—

Mr. Bieneman: I don't think you got a complete answer there, Counsel, if you wanted him to finish it. He said "We would gradually" and then the answer wasn't finished.

Mr. Cronon: I was going to cover that in my next question.

By Mr. Cronon:

Q. Then it follows, does it not, Mr. Lynch, that eventually, within the scope of this particular application, at least, all of the traffic which is now moving via rail would move via Pacific Motor Trucking Company?

A. That is right.

Q. I take it that in order to get Pacific Motor Trucking to file this application you had to give them some sort of a commitment as to the traffic that you would put on their truck lines. Now, let me ask you this: I take it that you have agreed with PMT that you will enter into a firm contract whereby you guarantee them a certain amount of tonnage within a given period of time?

A. Oh, yes. It would be strictly legal.

Q. Being head of the traffic department of the Chevrolet [fol. 323] Division, I take it that you, yourself at least, have a pretty good idea of how much tonnage you are going to guarantee in the first contract which is executed between the Chevrolet Division and the Pacific Motor Trucking or do you have an idea?

A. At the moment?

Q. Yes.

A. No, I don't.

Q. So am I to infer from that, Mr. Lynch, that you have given Pacific Motor Trucking Company no specific idea of the amount of tonnage that you will offer them if the application is granted?

A. Well, I gave them the same understanding that I am testifying here to, that we are gradually going into the trucking business.

Q. How about the number of cars, passenger cars?

Mr. Jacobson: Trucking business?

The Witness: I mean trucking service.

By Mr. Cronon:

Q. Have you told them how many automobiles during the first year of the contract you would ship via PMT?

A. No. That is just a matter of business relationship between the two of us.

Q. So that it could be, if the application is granted—and I will admit that it seems rather unlikely—that you might not give them any business during the first year if you didn't want to, is that correct?

The Witness: Will you ask that question again, please? [fol. 324] Mr. Johnson: If he is going to restate the question, I think he should reframe it.

Mr. Smith: It depends upon where you get the club on it.

(Last question read.)

A. If you are so sure it's not going to be granted, then we are just wasting a lot of time here.

By Mr. Cronon:

Q. I didn't say anything about it not being granted, I am just saying this, Mr. Lynch: That, assuming that the application is granted, you have not committed yourself to PMT to give them any particular amount of business, is that right?

A. I answered that by merely telling you that I have not made any commitments to PMT as to volume.

Q. In your own mind, do you have any idea as to what volume you may offer?

A. No, I have not. But we will sit down with PMT as soon as we get this permit, and we will gradually, in an organized business way, expand our trucking.

Exam. Linn: Could you give us any idea as to what the limits, high and low, might be, of the possible volume?

The Witness: Well, we are 54 per cent truck now and I would say that it would be easy to assume that we would start out and increase that to 75 per cent immediately, out of Oakland. I can see Van Nuys going practically a hundred per cent just as soon as we would tool up to it equipmentwise.

[fol. 325] Exam. Linn: That is a hundred per cent via motor vehicle?

The Witness: Yes.

By Mr. Cronon:

Q. Of course, that means that the Southern Pacific Company as a railroad would lose not only switch movements but long haul transportation, right?

A. That is correct.

Q. And the connecting railroads with Southern Pacific Company would stand to lose the same percentages?

A. That is right.

Q. Now, Mr. Lynch, at the present time, of course, General Motors Company ships parts and frames from which these cars are assembled from eastern origins to the California plants?

A. Yes.

Q. Would you state how frames and parts are moving to California at the present time?

A. Rail carload.

Q. One hundred per cent?

A. Yes.

Q. I understand—and correct me if I am wrong—that these parts move mostly over routes other than the northern transcontinental railroads, is that right?

A. Well, our route to Oakland is through the Omaha gateway.

Q. Yes?

A. Our route to southern California, Van Nuys, is through Tucumcari in connection with the Rock Island, and [fol. 326] also the TP through El Paso-Southern Pacific. A portion of that business also moves via, to both plants, via the Santa Fe.

Q. Would you continue to ship parts and frames via rail, as far as you know, in the future?

A. Yes.

Q. And Southern Pacific Company would participate in the movement of frames and parts to the assembly plants?

A. Yes.

Q. As a common carrier railroad?

A. Yes.

Q. And your proposal here, then, is to use the contract carrier subsidiary of Southern Pacific Railroad Company on the movement of the completed product out?

A. Yes.

Q. I take it, Mr. Lynch, that the movement of completed product out of the assembly plants under this proposal would depend upon a satisfactory rate from PMT, would it not?

Mr. Frizzell: I object sir. That is improper cross-examination. We didn't go into any question of rates on direct.

Exam. Linn: Objection overruled.

Mr. Cronon: Would you like that read, Mr. Lynch?

The Witness: Yes, will you repeat that, please.

(Last question read.)

A. Whatever PMT's rate to us for the service rendered would be, we will gladly pay it.

[fol. 327] By Mr. Cronon:

Q. Then you would have no objection, I take it, to using even present common carriers, as far as the rate level is concerned, I take it?

A. I am not interested in common carriers.

Q. Then, you have no complaint about their rates?

A. I know nothing about their rates.

Q. I say, you have no complaint?

A. As far as I am concerned, no.

Q. Is it usually your custom as a traffic manager, before moving a volume of traffic from one carrier to another, to determine what the cost of that transportation is going to be?

A. Oh, yes.

Q. It is?

A. Yes.

Q. That is not voluble. I don't think it's getting in the record. I mean, you will have to speak out loud.

A. Yes, cost is a factor with these things.

Q. Would there be any exception in this case, or will you also enter into a discussion, Mr. Lynch, of what this transportation is going to cost you under the PMT proposal?

A. We are out, we want to have the service, that is the primary consideration, and if the service via PMT that we require produces a greater cost than the rail rate, we

will use PMT. This service is paramount. We are in a highly competitive market, and the delivery of these auto-
[fol. 328] mobiles to our customer, the dealer, is very, very important.

Q. You pass along to your customer eventually, anyway, the cost of the transportation, the person who buys the car eventually pays the cost of the transportation, doesn't he?

A. I am not here to discuss those economics.

Q. I am asking you that.

A. I can't answer that.

Q. You don't know whether General Motors or Chevrolet assumes the cost of transporting a car or whether the customer eventually pays it, is that right?

A. I am sorry, but the destination charge that we make to our dealer is the charge that the customer pays.

Q. And that is a delivered charge?

A. That is a destination charge, which is based on Chevrolet's freight cost, and that is as far as I can go into that now, because that requires somebody else besides me.

Q. But isn't it pretty generally known, Mr. Lynch, that when you buy an automobile you pay for the cost of putting that in front of your house, that is, the customer's house?

A. I am not going into that.

Mr. Johnson: I object to going further into this type of cross-examination.

Mr. Frizzell: We are getting nowhere with this type of cross-examination.

A. I am not going into—

► [fol. 329] Exam. Linn: The witness may answer.

A. That is a matter of our pricing, and I am not qualified to discuss our pricing policies.

By Mr. Cronon:

Q. You are the head traffic man for the Chevrolet Division?

A. That is right.

Q. The gentlemen you spoke of as being in the room here are your subordinates?

A. Yes. The traffic managers at Oakland and Van Nuys.

Q. And they work under you?

A. Yes, sir.

Q. If I am wrong, Mr. Lynch, I wish you would tell me right now, but I am under the impression, from your testimony that you are not in a position to tell this Commission what type of a contract you would enter into with PMT as to tonnage or as to price, is that right?

A. Well, I thought I had answered that.

Mr. Frizzell: I object, Mr. Examiner. The type of contract is not a matter germane to this issue. The regulation of the Commission requires that a contract carrier contracting for a shipment enter into a bilateral contract which contract must be filed with the Commission. It's not a subject properly of this hearing.

Exam. Linn: The question attempts to summarize the record. I would prefer that it be framed in other language, [fol. 330] if it would be possible to do so.

Mr. Cronon: I will reframe it, Mr. Examiner.

By Mr. Cronon:

Q. Mr. Lynch, can you tell us, can you tell this Commission, what provision would be put into any contract with Pacific Motor Trucking Company, assuming this application is granted?

Mr. Frizzell: I object to the question as not germane to the issues before the Examiner.

Mr. Cronon: I haven't even completed it.

Exam. Linn: Will you complete the question?

By Mr. Cronon:

Q. (Continuing) With respect to tonnage which would be given to PMT or with respect to the cost of transportation?

Mr. Frizzell: The question was asked and answered some time ago, Mr. Examiner. I object on the grounds that it's repetitious.

Exam. Linn: I believe it is, too, but I will ask the witness if he can add anything to what he has already said on the subject.

A. The only way I can answer that is to say that we will enter into a contractual arrangement with PMT that meets with the requirements of the Interstate Commerce Commission and all the legal phases of it. Whatever that requires, we will do.

By Mr. Cronon:

Q. You don't know anything about detail on that as of now, is that correct?

[fol. 331] A. That is correct.

Exam. Linn: Well—

Mr. Cronon: That is all I have on that.

By Mr. Cronon:

Q. Mr. Lynch, you have discussed with several railroads the PMT application, have you not, before it was filed and even after it was filed?

A. I didn't discuss the PMT application with any railroads.

Q. Have you ever discussed this matter with any traffic representative of the Great Northern Railway Company?

A. No.

Q. What I have in mind, Mr. Lynch, and this might refresh your memory—

A. I wish it would, if I spoke to somebody.

Q. Has General Motors made representations to any railroad that this highway service would be used only when necessary and that it would be used in very small volume?

A. No. I can't imagine who it would be. It wasn't me, I know.

Q. Are you familiar with an offer by certain railroads who are protesting this application here today to enter into a joint arrangement whereby they would apply for trucking rights along their own roads and within their own territories in a joint arrangement with Southern Pacific Company?

A. No, I am not familiar with that.

Q. You are not at all familiar with that?

[fol. 332] A. No.

Q. Have you ever heard of such a discussion?

A. No, I haven't.

Q. Has your company ever told Pacific Trucking Company and Southern Pacific Railroad Company that they would never consider a joint arrangement between railroads on such a proposition as that?

A. You mean—

The Witness: Repeat that question, please.

(Last question read.)

Mr. Frizzell: I submit, the question isn't clear, Mr. Examiner. He is talking about "they", "they" being who?

The Witness: I am a little confused on that.

Mr. Cronon: Could you go back to the question before that, perhaps, and read that?

The Reporter: Yes.

(The reporter read as follows:

"Question: Are you familiar with an offer by certain railroads who are protesting this application here today to enter into a joint arrangement whereby they would apply for trucking rights along their own roads and within their own territories in a joint arrangement with Southern Pacific Company?")

Mr. Jacobson: You have in mind the railroads you represent?

Mr. Cronon: Yes.

A. No, I don't know.

[fol. 333] By Mr. Cronon:

Q. Has your company had in mind a service which involved, for example, Pacific Motor Trucking rights from one of your plants in California to Portland, thence trucking rights owned by the Spokane, Portland & Seattle Railroad Company to Spokane and Great Northern Railroad Company from Spokane to Kalispell, Montana?

A. We wouldn't be interested in that service.

Q. You wouldn't be interested in that service?

A. We want through service, a one-line haul.

Q. You want through service, whereby you would enter into a contract, that is all you want?

A. That is right.

Q. You do not want to use the presently certificated common carriers?

A. That is right.

Q. And your policy will go so far eventually as to give up the rail common carriers?

A. Oh, yes.

Q. Mr. Lynch, in your negotiations with Pacific Motor Trucking Company on the hauling of completed automobiles out of the assembly plants, would you look for any favoritism as far as rates are concerned while at the same time paying the general common carrier published rates on parts moving into California?

A. Absolutely not.

Q. Are you now distributing any Chevrolet cars in the [fol. 334] North Pacific Coast area which receive a prior rail haul and are distributed by a truck line?

A. No.

Q. Have you ever heard of Transport Storage & Distributing Company?

A. Is that the gentleman's name, the gentleman's name who runs that, is it Tarte?

Q. Tarte.

A. Tarte, yes.

Q. And he is the distributor of Chevrolet cars in that area, is he not?

A. I don't know.

Mr. Cronon: That is all.

Cross examination.

By Mr. Burchell:

Q. How many dealers do you have at St. George, Utah?

A. I don't know.

Q. How many dealers do you have at Boise, Idaho?

A. I don't know.

Q. Do you have more than one at each point?

A. I don't know.

Q. You said that you could reach Utah and Idaho from the Kansas City plant. Do you ever ship any cars from Kansas City to that territory?

A. We have.

[fol. 335] Q. By what means?

A. We have shipped to this area out of Kansas City at various times, which we call out-of-area shipments, and they have moved rail.

Q. Is that a sporadic movement or does it cover quite an extensive period?

A. No, it's sporadic.

Q. Have you ever shipped any cars from the Los Angeles area back into the Kansas City plant area?

A. Sometimes.

Q. And was that sporadic or—

A. Sporadic.

Q. You said if this application were granted you would start the movement of automobiles by truck to Arizona, Utah, Idaho and Oregon. Have you attempted to move any automobiles by truck to Oregon by Pacific Motor Trucking Company?

A. No.

Mr. Burchell: That is all.

Cross examination.

By Mr. Andersen:

Q. In the event the application should be granted, Mr. Lynch, and some of the dealers of your Chevrolet products nevertheless requested of the various assembly plants that the automobiles that would be sent to them should be sent by rail, would the General Motors people acknowledge and honor that request at all?

[fol. 336] A. Yes, we would.

Q. So that your dealers, then, would be able to control the routing, is that correct?

A. No, they wouldn't control it. They are our customers. We treat them as such, and we would consider their requests.

Q. Could you give me any indication, Mr. Lynch, as to what extent that consideration would go?

A. Well, if the dealer at Salt Lake City wanted rail and we were trucking them, and we were out of the rail business one hundred per cent and had no loading facilities available to our plant and we had no box car supply, we would truck them.

Q. So, then, in keeping with what you have testified, then, eventually you intend to get completely out of the railroad transportation of new automobiles, and at that point, at least, you would not honor the requests of the dealers, is that correct?

A. We wouldn't have the facilities. I am merely testifying here as to what we see ahead of us as the trend.

Mr. Andersen: That is all. I have no further questions.

Cross examination.

By Mr. Jacobson:

Q. Mr. Lynch, as I understand it, the traffic manager, Mr. Lilinthal, in Los Angeles and your traffic manager in Oakland are directly under you. Is that correct?

A. That is correct.

[fol. 337] Q. Insofar as policy is concerned, they echo your desires, is that correct?

A. That is correct.

Q. So that insofar as their testimony is concerned, it's merely a repetition or an evaluation of what you have told them to testify, is that correct, with respect to the policy of the company?

A. I didn't tell them to testify to anything.

Q. I mean, what they would testify to as to the needs of the Chevrolet assembly plants is dictated by you, as the general manager?

A. The policy.

Q. How long has that been in effect?

A. The policy?

Q. That supervision of policy.

A. It's always been in effect.

Q. Was it in effect in 1955?

A. It was.

Q. When did you determine that there was an immediate need for trucking service in the area in the western states out of the Van Nuys and Oakland plants?

A. We recognized it in the last few years.

Q. Has your policy changed in the past two years with respect to your desire to ship via truck to the customers?

A. It's still our desire to truck to the dealer.

Q. I say, has your policy changed?

[fol. 338] A. No, it hasn't.

Q. And the policy that you adopted—and, by the way, you said you were out here in the July hearing of 1956, is that correct?

A. Yes.

Q. You were present in the court room when Mr. Lilinthal was testifying, weren't you?

A. Yes, I was.

Q. Do you recall me asking the question: "Mr. Lilinthal, assume that the Commission should see fit to deny this grant of authority"—we are now relating to the grant of authority to southern Arizona—"are you going to continue to ship by rail or are you going to use other means of transportation?"

"Answer: We will continue to ship by rail."

A. I heard that.

Q. Have you changed your policy since?

A. He testified that he was going to continue to ship by rail.

Q. Wasn't he echoing your statements?

A. He testified at that time that he would continue to ship by rail. I changed his ideas and policies since that to the policy that we want truck.

Q. Assuming that this application is denied and there are existing facilities available to meet this immediate demand you have had for two years, would you utilize those facilities?

A. That are available out here?

[fol. 339] Q. Yes.

A. No.

Q. In other words, irrespective of what happens, if you don't get PMT trucking service, you are going to find another method of transportation?

A. Right. We are going to truck them.

Q. Does General Motors propose going in the trucking business themselves?

A. I don't know.

Q. Are you familiar with the existing contract carriers who have been available to you?

A. No.

Q. Did you make any investigation—

A. (Interrupting) No.

Q. Wait until I ask the question, please.

A. Pardon me, Mr. Jacobson. I thought you were finished.

Q. I expected a "No," answer. But let me ask the question, for the purposes of the record.

A. I am sorry, I thought you were finished.

Q. I will stipulate, I might ask you some that you will answer "Yes."

A. If the answer is "Yes," you will get "Yes."

Q. Now you have thrown me off.

Mr. Bieneman: Congratulations, Bill, if you can throw him off.

[fol. 340] By Mr. Jacobson:

Q. Referring to the testimony by Mr. Lilinthal, I am referring to the page 118 of the transcript of July 10, 1956, I went on further and said, "Notwithstanding the fact that there are existing facilities available?" And he said, "We can't use them because of our plant characteristics that will not permit any volume to go out the receiving gate." Is that the reason you won't use any other carrier or do you have other reasons?

A. I just testified to all the reasons we want a contract carrier.

Q. Well, I just asked you.

A. If you want me to go back and repeat all of that, I will do it.

Q. You have the power to request the PMT and Southern Pacific to let another carrier use your receiving gate, haven't you?

A. If we have—

Q. (Interrupting) Just answer my question.

A. I am going to answer it my way, not the way you want it. I am merely saying that if we engage another carrier to serve us, we would expect that carrier to have the proper facilities to serve us.

Q. Has it come to your attention since prior to and subsequent to the hearing of July 10, 1956, that certain Chevrolet dealers in southern Arizona, that are on points served by the Southern Pacific, have been solicited by truckaway carriers, has it come to your attention that they have requested [fol. 341] truckaway over existing facilities and haven't been able to get it?

A. Yes. That is what we are trying to get them now.

Q. Didn't they tell you that trucks come in every day to their competitors across the street, trucks come in from Los Angeles, and they want to get that service, too?

A. No, they didn't tell me that detail.

Q. Do you know that that is a fact?

A. No.

Q. Why won't you use the existing facilities if there is an immediate need for truckaway service?

A. Because we don't want to use common carriers.

Q. Do you know how many contract carriers there are running between Los Angeles and Arizona?

A. No.

Q. Do you know that there is any?

A. No.

Q. Do you know there's one there that—

A. (Interrupting) Nobody has ever told me if there are.

Q. Hasn't your superintendent or your traffic man told you?

A. No.

Q. Did you know that there is one who hasn't had any business, he has rights and facilities, since Studebaker closed, and he is seeking your business?

A. No.

Q. You didn't know of that?

[fol. 342] A. No.

Q. You made no investigation at all of existing—

A. (Interrupting) No.

Q. Please wait until I ask the question to answer, or to give a "No" answer.

A. I am sorry.

Q. Have you been advised by your traffic manager in Los Angeles prior to coming to this hearing of the existing facilities between Los Angeles and the points you propose to have PMT serve under this application?

A. No, I haven't.

Q. Have you been advised at all with respect to the facilities offered by these companies?

A. No, I haven't.

Q. You testified that 77 per cent of your traffic out of Los Angeles, out of Raymer, at the present time is truck-away and 23 per cent rail. That figure 77 per cent consists exclusively of intrastate traffic, doesn't it?

A. Yes, sir.

Q. The other 23 per cent, which is rail, you intend to divert from rail and move via truck, is that correct?

A. Yes, I believe there would be a diversion to that extent.

Q. Do you know what percentage of that 23 per cent goes into Arizona?

A. No, I haven't those figures with me.

[fol. 343] Q. You testified that when you came out here in July you told the Southern Pacific that regardless of the agreement they had with other railroads, they had to offer a service to you, and over-all service, or you would take the business away. What agreement did they—

A. (Interrupting) Well, I—

Mr. Frizzell (Interrupting): I object to that question. He did not testify about any agreements.

Mr. Jacobson: May we refer to the record? I made a note of it.

Mr. Frizzell: He did not testify as to his understanding about any agreements between railroads.

Mr. Jacobson: I made a note of it at the time.

Mr. Frizzell: You made the wrong note.

Mr. Jacobson: I made a note here in 1956, when he was here in July, he told the Southern Pacific, I forget the man's name that—

A. (Interrupting) Do you want me to repeat what he said?

By Mr. Jacobson:

Q. Yes.

Exam. Linn: Can you reframe the question, Counsel?

By Mr. Jacobson:

Q. Were you advised by Southern Pacific in 1956 that they had an agreement with other railroads that they wouldn't invade their territory, were you so advised by Southern Pacific in July 1956?

A. No.

[fol. 344] Q. What did you mean, then?

A. I testified, Mr. Jacobson, when he came out here in July, I had a conference with Mr. Peoples, Vice-president of traffic, of the Southern Pacific Company, and I told him at that time that I understood that the Southern Pacific had a policy where they would not truck to points off their railroad and that I was no longer interested in that policy of the Southern Pacific, that we wanted a complete truck service available to us at our plants on the Pacific Coast, in keeping with and consistent with our policy at other plants, and that if the PMT were not equipped to get that service for us we would have to go out and get it elsewhere, and that is what I testified to.

Q. When you made that statement you didn't know what, if any, service, authorized service, either contract or common—

Exam. Linn: (Interrupting) Let's make it factual.

By Mr. Jacobson:

Q. Are you familiar with the fact that the Santa Fe Railroad is seeking the right for truckaway service to

points in Arizona not served by the Southern Pacific out of Los Angeles?

A. No, I am not.

Q. If the Santa Fe had a truckaway service from Raymer to the points in Arizona not served by the Southern Pacific, would you give them any traffic?

A. No.

Q. Are all of these cars that transport Chevrolets [fol. 345] equipped with Evans loaders?

A. Yes.

Q. Approximately how many cars will be taken out of service if you convert the present rail tonnage to truckaway, that is, out of these two plants?

Mr. Frizzell: If you know, Mr. Lynch.

A. No, I do not know, and I think that we have a witness here who might be able to testify to that. I don't know off-hand.

By Mr. Jacobson:

Q. You testified concerning car shortages. Is there a car shortage at the present time?

A. I didn't testify about car shortages.

Q. Is there a car shortage at the present time to haul automobiles?

A. No.

Q. If these cars were removed from handling this traffic they would be available for transcontinental services, wouldn't they?

A. The cars themselves?

Q. Yes.

A. Yes.

Q. And that could tend to deprive some of the transcontinental truck carriers of some traffic they now enjoy via highways, couldn't it?

A. Could I answer you my way, please?

Q. Answer any way you want to, please.

Mr. Frizzell: Mr. Examiner—

[fol. 346] Mr. Jacobson: (Interrupting) Let him go.

Mr. Frizzell: I object to the question as improper cross-examination.

Mr. Jacobson: I think the purpose of the examination, as the proceeding goes forth, will be revealed. We will attempt to show that the removal of these cars, or the availability of these cars, will tend to create a condition that will have an adverse effect on some of the trans-continental carriers, by truck.

Exam. Linn: Objection sustained.

By Mr. Jacobson:

Q. Are you familiar with the fact that there is available truckaway service from your plant to St. George, Utah, at the present time?

A. No, I am not.

Q. If such a service were available, would you use it?

A. No.

Q. If contract and common carrier service were available from your Los Angeles plants to all of the points proposed to be served by PMT, would you utilize any of the services?

A. No.

Q. Why?

A. We already have established, since 1935, a trucking facility to us, and we are merely asking them to go out and extend themselves so as to be able to give us the service that we require, so I see no further need of going [fol. 347] to anybody else to get that service.

Q. Well, you are familiar, as a traffic man, with the fact that we have the Interstate Commerce Commission as a regulatory body?

A. Yes.

Exam. Linn: I wonder if we can avoid the argument.

Mr. Jacobson: It isn't argument.

Exam. Linn: Well, it is argument, in the form in which it started. Let's make it factual, if we can.

By Mr. Jacobson:

Q. What, if any, investigation have you made to determine from whom you will seek service, assuming the Interstate Commerce Commission should see fit to deny this application?

Mr. Frizzell: Would you read the question, Mr. Reporter?

(Last question read.)

Mr. Frizzell: I object to that on the ground that a while ago he asked if he had made any investigation and he said he had not.

Mr. Jacobson: This is another question.

Exam. Linn: I do believe we have exhausted the knowledge of the witness on that subject.

By Mr. Jacobson:

Q. Do you know at this time what you will do to secure service?

A. Oh, yes.

Q. If this application is denied?

[fol. 348] A. If this application is denied, we are going to provide a trucking service. I don't know whether it's going to be our own or some other contract carrier's now serving us.

Q. Is General Motors in the trucking business, transporting—

A. (Interrupting) No.

Q. Please wait until I ask the question.

A. Sorry.

Q. Does General Motors or any of its subsidiaries engage at the present time in either contract or common hauling of motor vehicles within the United States?

A. No.

Q. Have there been any policy discussions with the executives of General Motors looking to the establishment of a trucking service of your own to haul your own traffic.

A. No.

Q. So I infer from that that you would then seek an outside carrier, is that correct?

A. That would be our preference.

Q. And you have made no investigation in this particular area to find out if there is any available at the present time?

A. No.

Q. Do I understand that if a shipper today requests that General Motors at Raymer or at Oakland, a shipper in an adjacent state, requests that an existing carrier be permitted to move his traffic, you will honor his request? [fol. 349] A. What do you mean by "shipper"?

Q. Dealer, I mean.

The Witness: Will you repeat that again?

(The reporter read as follows:

"Question: Do I understand that if a shipper today requests that General Motors at Raymer or at Oakland, a shipper in an adjacent state, requests that an existing carrier be permitted to move his traffic, you will honor his request?"

A. No, we will not.

By Mr. Jacobson:

Q. The dealer receives a bill which shows a transportation charge, does he not?

Mr. Frizzell: I object—

A. (Interrupting) I am not—

Mr. Frizzell: (Interrupting) Just a minute, Mr. Lynch. That is irrelevant, what the bills show.

Mr. Jacobson: That is all.

Mr. Smith: May I ask the witness one question off the record before I proceed?

Exam. Linn: Off the record.

(Discussion off the record.)

Exam. Linn: On the record.

Cross examination.

By Mr. Smith:

Q. Who is the director general or director of traffic of the entire General Motors Corporation?

A. We do not have any.

[fol. 350] Q. Do you have a director of traffic over all of

the motor vehicle manufacturing plants of the General Motors Corporation?

A. I just don't quite understand that question, Mr. Smith.

Q. Do you have a director of traffic over all of the truck and automobile manufacturing plants of General Motors Corporation?

A. No. Each division has its own traffic director.

Q. And all of the divisions collectively, the traffic directors, have no superior boss, that is, a traffic man?

A. No.

Q. Who are you answerable to?

A. The general manufacturing manager of Chevrolet Motor Division.

Q. And who is he?

A. Mr. E. H. Kelly.

Q. Your Exhibit No. 18, that merely shows the Chevrolet assembly plants, the location of them?

A. Yes, sir.

Q. The other divisions of General Motors have assembly plants located at additional points, do they not?

A. They do, but I am getting out of my division when I get over to those. I will be glad to tell you what I know about them.

Q. Well, as a good GM man for many years, you know about the other General Motors plants?

A. Yes.

[fol. 351] Q. For example, Mr. Lynch, the Oldsmobile Division and the Reo Division have plants located in Lansing, Michigan—the Oldsmobile Division has a plant located in Lansing, Michigan?

Exam. Linn: Off the record.

(Discussion off the record.)

Exam. Linn: On the record.

By Mr Smith:

Q. What elements govern your choice of whether to ship by rail or ship by truck when you have a shipment of cars going to a dealer or dealers?

A. Economics and service.

Q. What do you mean by "economics"?

A. The over-all costs.

Q. I thought you weren't interested in rates.

A. I never said I wasn't interested in rates.

Q. Assuming that to a certain point the rail rate was lower than the truck rate, you would ship by rail, wouldn't you?

A. Not necessarily.

Q. You do, don't you?

A. Yes.

Q. ~~You have for many~~ years?

A. Yes, sir.

Q. You said that one of the reasons you preferred to use a contract carrier was that when you had model changes you called the contract carriers into the plants and advised them as to the size of the model so that they could retool [fol. 352] their equipment, if necessary, to handle the new model?

A. Yes, sir.

Q. And you kept your contract carriers fully informed from time to time as to your shipping requirements?

A. That is right.

Q. Is that correct?

A. That is right.

Q. Do not manufacturers of other makes of automobiles do the very same thing with common carriers that they use?

A. I would imagine so.

Q. Would it be any more trouble for you to call a common carrier into your plant and advise them of a model change than it would be to call a contract carrier into your plant and advise them of a model change?

A. I would ask this question in connection with that, Mr. Smith: Are you talking about one common carrier or all the common carriers available to haul the stuff? Are you talking about one company or several hundred companies?

Q. Well, I will make my question specific. To do that, I will just refer to one.

A. Yes, sir, we could call one in, just as well as we could—

Q. (Interrupting) Suppose, to serve your entire territory, you had to call two, would that be much more trouble than calling one?

A. No.

[fol. 353] Q. You made one remark that I was very interested in, in answer to a question on direct examination, in referring to, and using the term "automobiles," when you said that that included passenger cars as well as trucks. Is it your position, as a shipper, that the term "automobiles" includes trucks as well as passenger cars?

A. I merely mentioned "passenger cars" and "trucks". Automobiles, in common parlance, refers to passenger automobiles.

Q. And trucks?

A. Just passenger cars, in common language.

Q. That wasn't the answer that I wanted, but thank you.

A. That is the correct one, that is the one you will get.

Q. I agree.

One of the motor carriers that I represent in this proceeding is a common carrier by the name of Western Auto Transports, Inc. Are you acquainted with that company?

A. My own acquaintance with that company is just through the acquisition of your new vice-president and head of the sales force, Mr. Herrick, in Detroit.

Q. And Mr. Herrick was formerly the traffic manager of the Packard Motor Car Company?

A. That is correct.

Q. Since Mr. Chuck Herrick resigned as traffic manager of the Packard Motor Car Company and became vice-president and sales manager for Western Auto Transports, [fol. 354] Inc., has he called upon you and solicited Chevrolet traffic out of your plants?

A. No.

Q. Do you know that Western Auto Transports, Inc., has a terminal located in Los Angeles, California?

A. No, I didn't.

Q. Did you know that they had authority from this Commission to transport passenger cars in initial movements by the truckaway method from Los Angeles, California, to all points in the state of Utah?

A. No, I didn't.

Q. What objection, if any, Mr. Lynch, would you have to using the services of Western Auto Transports to Utah from Los Angeles?

A. Well, we already have established a service to us from PMT that we are asking them to extend themselves to give us the same service. We see no need to go out and get any further—

Q. (Interrupting) So it's your position that existing carriers shouldn't be offered the opportunity to serve you, but that a carrier who doesn't have authority, that you want to have authority, that that carrier should be granted the authority?

A. Yes; that is our position.

Q. Are you acquainted with the other motor carrier whom I represent, a common carrier, Kenosha Auto Transport Corporation?

A. Yes, I know them.

Q. Do you know that they have a terminal in Los Angeles?

A. No, I don't.

[fol. 355] Q. Have they ever solicited your traffic?

A. No, they haven't.

Q. If they did solicit your traffic out of Los Angeles, they would solicit it from your Los Angeles traffic man rather than from your office in Detroit, wouldn't they, or wouldn't you know?

A. I would imagine they would solicit the Los Angeles, the local people.

Q. And they could have solicited your local traffic manager in Los Angeles and you wouldn't know about it?

A. Yes.

Q. I assume that you would have objection to using their service for the same reason that you wouldn't want to use Western Auto Transports' service?

A. That is correct.

Q. In the event one of your local dealers sent an order in and you got a routing instruction to ship via some motor common carrier, would you honor that routing?

A. No, we wouldn't.

Q. Hasn't your office issued instructions to motor common carriers to solicit traffic from your dealers?

A. No.

Q. No?

A. No.

Q. You said that the real reason that you wanted motor [fol. 356] truck service in lieu of the present rail service was that you wanted "service"?

A. Yes.

Q. And you said that rates didn't make any difference and you would gladly pay a higher rate in order to get the superior service, is that correct?

A. That is correct.

Q. Just how high would you go?

A. Oh, I don't know. The cheapest is not always the most economical, you know.

Q. That wasn't my question.

A. I don't know how high we would go.

Q. You also testified that—

Exam. Linn (Interrupting): I wonder if we could avoid summarizing the record.

Mr. Smith: This is the last summarization. I don't know how to put the question unless I can.

Exam. Linn: Just ask him a question.

Mr. Smith: All right.

By Mr. Smith:

Q. You want the motor carrier who is to serve you to have the proper facilities, and you used the term "proper facilities." Just what proper facilities would you expect a common carrier to have before you would use his service?

A. Comparable to what we have now.

Q. By that, do you mean substantially the same kind and type of equipment?

[fol. 357] A. Receiving facilities.

Q. And prompt delivery?

A. Prompt dispatch, quality service.

Q. One last question, and that's all.

Mr. Frizzell: Could we have that question and answer read back, sir?

(The reporter read as follows:

"By Mr. Smith:

"Question: You want the motor carrier who is to serve you to have the proper facilities, and you used the term 'proper facilities.'" Just what proper facilities would you expect a common carrier to have before you would use his service?

"Answer: Comparable to what we have now.

"Question: By that, do you mean substantially the same kind and type of equipment?

"Answer: Receiving facilities.

"Question: And prompt delivery?

"Answer: Prompt dispatch, quality service.")

Mr. Smith: I am satisfied with his answer. If you want, you can ask him on redirect.

Redirect examination.

By Mr. Frizzell:

Q. Is there anything further that you have in that connection?

Mr. Smith: Just a minute. Wait until I get through with my cross-examination.

[fol. 358] Mr. Frizzell: He was answering a question.

Exam. Linn: Finish your cross.

The Witness: I was finished.

Mr. Frizzell: Oh.

Mr. Smith: Quit interrupting me while I am interrupting you, please.

By Mr. Smith:

Q. You or someone in your company requested the applicant, PMT, to file this application, did you not?

A. Yes.

Q. Did you or anybody else in the Chevrolet Division of General Motors Corporation request any other motor carrier or motor carriers to file similar applications?

A. No.

Exam. Linn: Off the record.

(Discussion off the record.)

Exam Linn: On the record.

We will adjourn until 9:00 o'clock in this same room tomorrow morning.

(Whereupon, at 5:05 p.m., Wednesday, February 20, 1957, the hearing in the above-entitled matter was adjourned, to resume tomorrow, Thursday, February 21, 1957.)

[fol. 359]

BEFORE THE INTERSTATE COMMERCE COMMISSION

[Title omitted]

DOCKET NO. MC-78787 (Sub 37)

Transcript of Hearing—February 21, 1957

Garden Room, Fairmont Hotel,
Mason and California Streets,
San Francisco, California.

Met, pursuant to adjournment, at 9:00 a.m.

BEFORE:

F. ROY LINN, Examiner.

APPEARANCES:

(As heretofore noted.)

ADDITIONAL APPEARANCE:

FRED V. SCHLAF, 1635 Southeast Water Avenue, Portland, Oregon, appearing for Portland Traction Company, protestant.

[fol. 360]

PROCEEDINGS

Exam. Linn: We will continue with the cross-examination of Mr. Lynch.

Mr. Smith: I had completed my cross-examination.

WILLIAM R. LYNCH resumed his testimony as follows:

Cross examination.

By Mr. Handler:

Q. Mr. Lynch, you provided the record with some figures as to the percentage of trucking and rail out of Oakland, 54 per cent was trucking and 46 per cent rail. Do you recall those figures?

A. Yes, sir.

Q. Is that with reference to Plant No. 1 alone?

A. That is the entire operation.

Q. What moves out of Plant No. 2?

A. Plant No. 2 is trucks.

Q. Do you have the figures for Plant No. 1 alone?

A. We haven't the figures here. I can't answer that. Mr. Cron will have them.

Q. With respect to Los Angeles, you said that all of the truckaway service is in California. Is the same true with respect to Oakland, intrastate?

Mr. Frizzell: Read the question back, Mr. Reporter.

(Last question read.)

By Mr. Handler:

Q. Do you think you have made a mistake?
[fol. 361] A. Yes.

Q. Do you recall what the question was?

A. We truck to some Nevada points out of there.

Q. Is that of automobiles or trucks?

A. Both.

Q. Is it from Plant No. 1 or Plant No. 2?

A. Both.

Q. Who performs that service?

A. PMT.

Q. Exclusively?

A. Yes.

Q. When you were discussing the organization of carriers, contract carriers to serve your firm back in the 30's, you did not mean to imply, did you, Mr. Lynch, that Pacific

Motor Trucking Company was organized for General Motors operations?

A. In '35 they were.

Q. Isn't PMT a common carrier truck service of general commodities serving all the public?

A. PMT acquired or purchased what was then known as a carrier that was serving that location for dealers at that time and PMT—

Q. (Interrupting) You aren't answering my question, Mr. Lynch.

A. I am trying to answer it. I am trying to reconcile the transaction how PMT was born.

Q. Is it your recollection that it was born by the purchase of a truckaway operation?

A. Of an operation that was in existence at that time.

Q. You don't know that PMT has for many years been engaged in the transportation of general freight for the public?

A. PMT, as far as the engagement of Chevrolet, is confined to strictly automobiles, as far as I am concerned. If they are in the merchandise business, I suppose that is a common carrier operation. I don't know.

Q. Assume that it is a common carrier operation for general commodities for the public generally, not only in California but points in California and neighboring states. That doesn't make any difference to you, does it?

A. No.

Q. I am somewhat intrigued by this apparent favoritism you assert you have for contract carrier service. At the time of the filing of this application did you request PMT to file it as a contract carrier operation?

A. We did.

Q. Would it make any actual difference to your company if PMT had filed to serve the site of the General Motors plant at Oakland as a common carrier?

A. Would it make any difference to us?

Q. Yes.

A. Yes, it would.

Q. What difference would it make?

[fol. 363] A. In keeping with Chevrolet policy, we want

the same type of service on the Pacific Coast here as we have nationally. A company dedicated to our service and our service only, we want, and not one holding themselves to serve the public generally and holding themselves out to serve our competition, which will find us someday short of equipment, long on cars and with interrupted service. That is the kind of a service that Chevrolet wants.

Q. You have said that several times and I am familiar with your views in that regard. But if the application were limited to the site of the General Motors plant at Oakland, as a common carrier, you would still have the exclusiveness of the service at that point, would you not?

A. I don't know. My knowledge of the transportation business is such that I know of no common carrier that is exclusive to any one individual.

Q. All right. Do you have an agreement with PMT that they will not serve any other automobile manufacturer at any other point?

A. We have a contract with PMT to serve Chevrolet.

Q. At where?

A. Van Nuys and Oakland.

Q. You do not have any contract with them that they shall not serve any other automobile manufacturer, do you?

A. No, we do not.

Q. There is nothing to prevent them from making a contract [fol. 364] to serve Ford or Lincoln?

A. No.

Q. Nothing?

A. No.

Q. And that wouldn't make any difference to you?

A. No.

Q. Then, what difference would it make if PMT served the Oakland plant of General Motors as a common carrier, if it only could serve the General Motors plant at Oakland? What difference does it make?

A. As a common carrier or a contract carrier?

Q. A common carrier.

A. As a common carrier, he would be holding himself out to the public in general—

Q. (Interrupting) All right—

A. You want the answer, don't you?

Q. To the question, Mr. Lynch.

A. The question is, or the answer is, I do not want to have a common carrier service at Chevrolet plant locations for the purpose that they hold themselves out to the public generally, and we need a service dedicated solely to Chevrolet's business.

Q. I don't want to argue with you, Mr. Lynch, but if General Motors Plant—

Exam. Linn (interrupting): It's clearly argument, counsel, from this point on.

[fol. 365] Mr. Handler: All right.

By Mr. Handler:

Q. From the standpoint of service and the dedication of facilities, would there be any difference if PMT were a common carrier?

A. Yes.

Q. What difference would there be?

A. As a common carrier, they would be holding themselves out to Ford and Chrysler—

Q. At Oakland?

A. With their rates, at Oakland or any other locations, and their rates would be public rates and we would be paying the same as Ford and Chrysler, their costs would be co-mingled to such an extent that we would not have the benefit of any efficiency or economics that a contract carrier offers also.

Q. Then, is the real reason for your dislike of common carrier service that the rates would be published and open to public notice?

A. I don't dislike common carriers.

Q. Is that your reason for not wishing to have common carrier service, that the rates would be made public?

A. Our reason for contract carrier service is solely that dedication of that service to Chevrolet, to assure us of uninterrupted service with the volume production that we produce daily and deliver.

Q. You are familiar with the fact that such manufacturers as Ford and Chrysler use common carrier services with that same dedication?

A. No, I don't know that they have any dedication. I understand that they use common carriers.

Q. And it's that competition that you have found so keen that is now inducing you to support this application, isn't it?

A. Will you repeat that again?

Q. It's the competition of these common carrier truck lines serving your competitors that has induced you to support this application, isn't that a fact?

A. No. This application was originated by the PMT at my request to give us a service throughout the entire Pacific Coast area, and in so doing, it's a policy of General Motors that any faithful servant or supplier of ours over a period of 20-some years, we do not just take and say to them, "Well, it's been nice knowing you. We are going to take somebody else in and do this business with them." We don't do business that way in General Motors. This is an established company that has been serving our company location for 22 years. We asked them to extend their services to give us trucking within the entire Pacific Coast area.

Q. In order that you could meet—

Mr. J. Schell (interrupting): Could I hear that answer again, please?

(Last answer read.)

[fol. 367] Mr. Handler: I don't think you understood the question I was asking you, if you did not ask PMT to do this so that you could meet the competition that you were encountering in the services that were being performed by common carriers for your competitors.

The Witness: I asked PMT to make this application to the Interstate Commerce Commission to give us trucking service within the Pacific Coast area.

By Mr. Handler:

Q. And you said that business was competitive and that is why you required it, isn't that right?

A. I just gave you the answer to the question.

Q. You said on direct that there was competitive—

A. (Interrupting) Sure, we are in a competitive market, with competition.

Q. You said you had had objections or complaints from a dealer at St. George, Utah, an off-rail point?

A. Yes.

Q. How are you now delivering to St. George, Utah?

A. Rail.

Q. How do you get it from your assembly plants there if rail doesn't reach it?

A. He gets it there at a railhead some 60 miles away.

Q. Does the dealer then go to the railhead and get it?

A. That is right.

Q. You have already testified if there was available truck [fol. 368] service to St. George, Utah, you wouldn't use it now?

A. No.

Q. How about Boise? You said there was a complaint at Boise.

A. Yes.

Q. That is a rail point?

A. That is right.

Q. Are you shipping by rail to Boise now?

A. Yes.

Q. Mr. Lynch, I represent Convoy Company. Do you know that that company has actively solicited your company for business out of Oakland?

A. No, I do not.

Q. You have no familiarity with that?

A. No, I do not.

Q. Your traffic managers located at the plants do not report solicitation efforts to you?

A. No, they do not.

Q. You haven't instructed them to do so?

A. No, I haven't.

Q. They don't keep you aware, then, of what facilities other than PMT and rail are available in the field?

A. They do not.

Q. They do not. Well, now, if Convoy Company were willing and able to establish and maintain for you all of the facilities which you require, and affording the service on

[fol. 369] the basis of a cost of transporting General Motors products alone, would you have any hesitancy in using that service to Idaho, Washington and Oregon, for example?

A. We wouldn't use it.

Q. Why not?

A. Because we already have a well established company.

Q. Assuming, then, that this well established company, which I assume is PMT—

A. That is correct.

Q. (Continuing) —were denied this application. You have indicated that your company would do something else in that event?

A. That is correct.

Q. I take it, if this application were denied, then you would look at my client's service?

A. No, we would not.

Q. Why not?

A. We would establish our own company out here on the Pacific Coast.

Q. That isn't what you said on direct examination, Mr. Lynch, or on cross. You originally said that—

A. (Interrupting) Well, I—

Q. Just a minute.

Exam. Linn: Let's not argue with the witness.

Mr. Handler: I am just trying to clarify what is an [fol. 370] obvious contradiction.

A. We would establish a carrier out here in keeping with Chevrolet policy. We would not use your service as a common carrier. Does that answer your question?

By Mr. Handler:

Q. In part, it does. You would establish a carrier without any connection with any other shipper, is that right?

A. Correct.

Q. You understand that PMT now renders service for other shippers, do you not, in transporting general commodities—

Mr. Frizzell: Will you repeat the question?

Mr. Handler: It isn't finished, I hadn't finished it.

Mr. Frizzell: I know you didn't, but it was getting to be too general, I thought.

(Last question read.)

Mr. Frizzell: I think he answered that question, Mr. Examiner, sometime ago.

Exam. Linn: Yes, I believe he had.

By Mr. Handler:

Q. I was relating it now to general commodities for automobile manufacturers.

Mr. Frizzell: If you know, Mr. Lynch.

Exam. Linn: The record is replete on that.

Mr. Handler: All right.

By Mr. Handler:

Q. Do you have the figures of the distribution, Mr. Lynch, out of Plants Nos. 1 and 2 to the states involved in this [fol. 371] application?

A. No, I have not.

Q. Who does have that?

A. Mr. Cron, our traffic manager at Oakland, at the Oakland plant.

Q. He will be a later witness?

A. That is right.

Mr. Handler: That is all I have.

Mr. Bieneman: I want to clear up two things that were discussed yesterday on the record. I have consulted with Mr. Johnson and he has indicated sometime during the course of the proceeding a witness would read into the record from the rail guide the plants that are served directly by the Southern Pacific, where that is not the case what local railroad or other railroad may serve those plants. He has also agreed with me, in order to avoid lengthy cross-examination, that he would have no objection to my introduction into this record as an exhibit the reply to which I referred yesterday, filed September 23, 1955, and with the Examiner's permission I will make copies of

this reply and file them with you as a late-filed exhibit, if that is agreeable.

Mr. Johnson: Mr. Examiner, I will offer no objection to the submission of that document in the record. As a matter of accommodation, not particularly for the reason you gave, Mr. Bieneman, because it's immaterial to me.

[fol. 372] Mr. Bieneman: That is all right.

Mr. Johnson: But I think the offer would be more appropriately made by you at the conclusion of our case, because this will be part of your evidence.

Mr. Bieneman: I think that is right, sir, but I do want to ask Mr. Lynch some questions that are connected with this matter, not from this particular document, but I wanted it clear on the record at this stage, because I do propose to offer this as an exhibit.

Cross examination.

By Mr. Bieneman:

Q. In connection with this document to which I have just referred, that was filed in September 1955 on behalf of the Southern Pacific Railroad, the statement is made in three or four places to the same effect, and the final statement is this—

Mr. Frizzell (interrupting): Mr. Examiner, I don't know whether this is proper cross-examination. Counsel is going to read from a document that is not of record. There is nothing to indicate that this witness has any familiarity with the document at all.

Mr. Bieneman: Well, I won't read from the document. I think that objection is probably well taken.

By Mr. Bieneman:

Q. Assuming for the purposes of my question, Mr. Lynch, that there are some statements to the general effect that the reductions made by the Southern Pacific Railroad from [fol. 373] the Los Angeles area to Arizona were necessary in order to avoid loss of business to truck competition, I would like to know whether any such statement was made

by you or anyone in your organization to the Southern Pacific at approximately that time, in the fall of 1955.

A. No.

Q. In other words, nothing was said by anybody in your organization to indicate to the Southern Pacific that any rate reductions were necessary in order to avoid the loss of traffic?

A. No.

Q. That is right?

A. That is correct.

Q. Then, if such statements were made they were without any justification on your part, as a shipper?

A. Right.

Q. Mr. Lynch, you recall, do you, the circumstances of those rate reductions and the fact that the Commission suspended them?

A. No; I am not familiar with that.

Q. You don't recall that at all, sir?

A. No.

Q. Do you recall the fact that after the suspension a hearing was scheduled by the Commission with respect to those rates in the early part of 1956, in January or February?

Mr. Frizzell: I object to the question and submit that it's immaterial and irrelevant to the issues in this proceeding.

[fol. 374] Exam. Linn: I believe you have exhausted the information of this witness on that subject, Mr. Bieneman.

By Mr. Bieneman:

Q. Well, I will ask you one other question, Mr. Lynch. Was your company responsible for the application which was filed in March 1956 by the PMT for truck rights from the Los Angeles area to Arizona?

A. We were.

Q. And do you know whether or not that application was filed within a few weeks after the Southern Pacific withdrew these reduced rates?

A. I am not familiar with that at all.

Q. You have never heard of it before?

A. Never heard of it before.

Q. It wasn't even discussed with you at the time?

A. Not with me personally.

Q. Was it discussed with someone in your organization?

A. Not to my knowledge.

Q. Then, so far as you are concerned, Mr. Lynch, and not only you personally but your company, as a matter of policy, never at any time did you contemplate taking any traffic away from the railroad because of the rates being too high as compared with truck rates, is that right?

A. No. If Southern Pacific would carry them down here under their arms, we are still going to truck them.

Q. I think you misunderstood my question, sir.

[fol. 375] Mr. Burchell: Read that answer.

(Last answer read.)

By Mr. Bieneman:

Q. You misunderstood my question. The question was not about truck service, but at any time have you indicated, within the past several years, indicated to the Southern Pacific, as a railroad, that you were going to take rail traffic away from them because their rates were too high in relation to truck rates?

A. No.

Q. Did you ever indicate, or anyone in your organization indicate, to the Southern Pacific Railroad, as a railroad, that you were going to take traffic away from them as a railroad for any reason whatsoever?

Mr. Frizzell: Hasn't that question been asked, Mr. Examiner?

Exam. Linn: I feel it has been given a world of space in this record.

Mr. Frizzell: I think he is badgering the witness now. He is badgering the witness now.

The Witness: I don't understand your question. Repeat it.

By Mr. Bieneman:

Q. Let me put it a different way; then I will drop the subject. Did you ever indicate to the Southern Pacific Railroad, or did anyone in your organization indicate to them, that there was any danger of your diverting traffic from the railroad to some company other than the Pacific Motor Truck?

[fol. 376] The Witness: Will you read that, Mr. Reporter?

(Last question read.)

Mr. Frizzell: I will object to the question. It is improperly phrased.

Exam. Linn: I understood the witness to say several times in this record that advice was given to Southern Pacific that some effort should be made to extend the authority of PMT and, if that was not possible, then the shipper would have to take some other steps to obtain truck service. I think that is clearly shown of record.

Mr. Bieneman: My question is different than that, Mr. Linn, and I don't wish to argue with you or the witness, but I would like to have the record clearly show whether or not there was ever any indication given by the shipper that there was any danger of any loss of traffic, at that time, to anyone other than the Pacific Motor Truck, as the rail subsidiary.

Exam. Linn: Are you able to answer, Mr. Lynch?

A. What time are you talking about?

/ By Mr. Bieneman:

Q. Anytime up until now.

A. I told the Southern Pacific management, Mr. W. G. Peoples, vice-president in charge of traffic, in July of 1956 that we were not concerned with Southern Pacific's policy any longer about hauling cars to points—

Q. I don't want to interrupt you, please, sir, but I think you are about to say the same thing you said yesterday [fol. 377] and it isn't necessary.

A. O-K.

Q. All I want is one answer. Did you ever indicate to Mr.

Peoples or anybody else at the Southern Pacific that you were going to take traffic away from them and give it to some other company, other than the Pacific Motor Truck?

Mr. Frizzell: Mr. Examiner, I think the question has been asked, and it's been answered, several times on the record, and I object to it—

Mr. Bieneman: If it has, why can't he answer it right now? I thought he said a minute ago that he didn't understand the question.

Exam. Linn: Are you able to answer?

A. I will tell you that we told the Southern Pacific management that if they did not have PMT provide a trucking service to service the Chevrolet plants on the Pacific Coast we would provide our own service.

By Mr. Bieneman:

Q. In other words, then, there was, it was clear—

A. And that was not a threat and there was no danger involved in it. It was plain business.

Q. In other words, you made it clear to them that there was no danger of any loss of traffic unless and until the Commission might deny this application?

Mr. Frizzell: I hate to interrupt counsel, but I think he [fol. 378] should be admonished not to try to interpret the answers of the witness.

Mr. Bieneman: I am not trying to interpret.

A. You have got it, as far as I am concerned.

Mr. Bieneman: I am trying to get one thing, and I haven't gotten it yet, Mr. Examiner.

By Mr. Bieneman:

Q. Did you at that time that you have discussed make it clear that the danger of any diversion of traffic from the Southern Pacific, either through its railroad or through its truck subsidiary, the danger of any such diversion occurring only if and when the Pacific Motor Truck should fail to secure truck rights in its own name? Is that right?

A. I have already answered that.

Q. Would you mind answering it now, please?

Mr. Frizzell: I object, Mr. Examiner.

Exam. Linn: Sustained. I believe it's fully shown of record.

Mr. Bieneman: I don't think it is. If you feel it is, could you tell me what the answer is on the record?

Exam. Linn: I feel that PMT will get first chance if it is able to get any operating rights, then the problem will be settled so far as General Motors is concerned; if PMT is unsuccessful, I think the record shows that General Motors will then explore whatever remaining possibilities then may exist.

Mr. Bieneman: But that is not my question. That is clear. My question was if he made it clear to the railroad [fol. 379] at that time that there was no danger of any diversion until and unless this application had been tried and denied.

Exam. Linn: The witness has made it quite clear that General Motors does not propose to employ Robertson, Convoy or any other motor carrier now serving points of assembly in California.

Mr. Bieneman: I think he has made that clear, sir, but again, what I am interested in is what he told the railroad at that time, not what he has said here today. I want to know whether that was in effect the statement made to the railroad at that time.

Exam. Linn: Are you able to enlighten us on that, Mr. Lynch?

The Witness: Mr. Examiner, I can only tell this gentleman what I have already told the Southern Pacific and what I have testified here. If he wants me to manufacture some theory for his benefit or for his convenience, I just can't do it. There is the facts, in the record.

Exam. Linn: You have given us the full substance of your conversations with the Southern Pacific?

The Witness: I have.

By Mr. Bieneman:

Q. Mr. Examiner and Mr. Lynch, I assure you I don't want you to manufacture anything. I would simply like

to get one simple fact clear in the record. You can give me any answer that is correct. That is whether you have made it clear to the railroad at the time you discussed this matter with them that there was no danger of any diversion [fol. 380] to any other form of service unless they were unable to secure truck rights.

Mr. Frizzell: I object to the question.

Exam. Linn: Sustained.

Mr. Bieneman: I respectfully suggest, Mr. Examiner, we don't have an answer to that question on the record, and we are entitled to an answer, and for that reason I except to your ruling.

By Mr. Bieneman:

Q. Mr. Lynch, the statement was made yesterday by a witness for the Pacific Motor Trucking Company, Mr. Booth, that the basic reason for the filing of the earlier application for truck rights into Arizona was a car shortage. Was that your understanding of the basic reason?

A. That was one of the contributing factors, yes.

Q. Was that the fundamental factor, as you see it?

A. No. The fundamental factor was that we wanted truck service to those points in Arizona.

Q. And that is the basis on which you supported the application and on which the Joint Board recommended the grant of authority, wasn't it?

A. That is right.

Q. Not because of a car shortage, was it?

A. No.

Mr. Bieneman: That is all.

Cross examination.

By Mr. Beardsley:

Q. Mr. Lynch, in setting the transportation policies for the Chevrolet Division, I would assume that you take into [fol. 381] consideration first of all, among other things, at least, the Act itself, the national transportation policy?

A. Oh, yes.

Q. And I would assume also that you are quite familiar with the decisions of the Commission and the courts, in connection with operations—

Mr. Frizzell (interrupting): Mr. Examiner, that is not proper cross-examination, to inquire of this witness what he knows about the law.

Mr. Beardsley: Mr. Examiner, I think I have a right to go into that. He has testified that he sets transportation policies for the organization and I would like to know what he takes into consideration in setting those policies.

Mr. Frizzell: I think every businessman ordinarily consults with counsel on these legal questions.

Exam. Linn: I suggest you proceed directly to the question you have in mind, without laying any substantial predicate.

Mr. Beardsley: I didn't hear your remark, Mr. Examiner.

Exam. Linn: Proceed directly to the question you have in mind.

Mr. Beardsley: That is the question I have in mind, I was coming to it.

Exam. Linn: Objection sustained, if that is what you had in mind. This is not a test of the witness's information as to the law.

By Mr. Beardsley:

Q. Are you aware of the fact that generally speaking the [fol. 382] Commission has restricted railroad operation of motor vehicles to service which is tied in with the operations of the railroad itself?

Mr. Frizzell: I object to the question. Improper cross-examination.

Exam. Linn: Sustained.

Mr. Beardsley: And I can't go into that question in determining what Mr. Lynch does in connection with setting transportation policies of the Chevrolet Division, Mr. Examiner?

Exam. Linn: The objection to the pending question is sustained. I don't know what other questions you have in mind.

Mr. Beardsley: I would like to know from this witness what attention the Chevrolet Division of General Motors pays to the Act, to the national transportation policy and to the decisions of the Commission and the courts.

Exam. Linn: That is a question?

Mr. Beardsley: You said you wanted to know what I have in mind. I am trying to tell you.

Exam. Linn: As far as the record stands now, there has been an objection and the objection has been sustained. Do you have any further questions of the witness?

Mr. Beardsley: No, I do not, Mr. Examiner.

Cross examination.

By Mr. Singer:

Q. With the exception of PMT, isn't it correct that all of the contract carriers serving your company are so-called [fol. 383] independent motor carriers, not affiliated with a railroad?

A. That is correct.

Q. At your Flint plant, isn't it correct that your company uses the services of more than one motor carrier?

A. We use two.

Q. What are the names of those?

A. Anchor Motor Freight and Complete Auto Transit.

Q. And at Norwood, Ohio, you use the services of more than one?

A. Anchor Motor Freight and Complete Auto Transit.

Q. Are there any other assembly plants at which you use the services of more than one motor carrier?

A. No.

Q. Are you familiar with the fact that some of the contract carriers serving your company are affiliated through common control with carriers who serve other auto manufacturers?

Mr. Frizzell: If you know, Mr. Lynch.

A. I don't know.

By Mr. Singer:

Q. Do you know whether or not Complete Auto Transit, for example, is affiliated with another carrier through common control, serving other manufacturers?

A. No, I don't know about Mr. Rice's personal holdings, what Mr. Rice's personal holdings are.

Q. Were you present during the cross-examination of Mr. Booth yesterday?

[fol. 384] A. Yes, sir.

Q. Did you hear his testimony to the effect that PMT, in their intrastate operations for your company, were compensated generally on the basis of a cost-plus principle?

A. Yes, I heard him say that.

Q. Is that policy of your company to compensate your contract carriers on the basis of the cost to the contract carrier of rendering the service plus a reasonable profit?

A. That is our policy. We see to it that it's carried out.

Q. And that would be followed in the event that PMT was granted the authority here?

A. Absolutely.

Q. Does the compensation to your contract carriers on that basis depend on, to some extent, the volume of traffic being given to them at any particular time or over any extended period?

A. No—well, the volume has something to do with it, but it's a matter of business relationship between the two companies that we see that they make a reasonable profit.

Mr. Singer: Thank you very much.

Exam. Linn: Is there any other cross-examination?

(No response.)

Exam. Linn: Redirect?

Mr. Frizzell: Yes.

Redirect examination.

By Mr. Frizzell:

Q. I just have one question to ask you, Mr. Lynch. Mr. [fol. 385] Singer asked you whether or not you have more

than one contract carrier at locations other than at Flint and Norwood and you testified that those are the only two locations at which you have more than one contract carrier and, in fact, you have two contract carriers at those locations. How long have those two contract carriers been serving those locations?

A. Since 1934.

Mr. Frizzell: That is all.

Exam. Linn: Are there any objections to Exhibits 15 to 18, inclusive?

OFFERS IN EVIDENCE

Mr. Frizzell: I offer them at this time.

Exam. Linn: Is there any objection?

(No response.)

Exam. Linn: Without objection, Exhibits 15 to 18 will be received.

(Intervenor's Exhibits Nos. 15 to 18, inclusive, Witness Lynch, were received in evidence.)

Mr. Frizzell: Mr. Barrett.

DUDLEY B. BARRETT was sworn and testified as follows:

Direct examination.

By Mr. Frizzell:

Q. Will you state your name for the reporter, Mr. Barrett?

A. Dudley B. Barrett.

Q. Your address?

[fol. 386] A. 3044 West Grand Boulevard, Detroit, Michigan.

Q. What is your occupation?

A. I am the traffic manager of the Buick-Oldsmobile-Pontiac Assembly Division of General Motors Corporation.

Q. How long have you been in that position?

A. About seven years.

Q. Prior to that who were you with?

A. I started with General Motors at the Oakland Motor Coach Company in 1929 and I held various traffic positions there until 1932 when I went to Buick Division at Flint, Michigan, and I held various positions there until 1941 when I went to Chicago as traffic manager of the Buick Aviation Engine plant. In 1946 I went to Kansas City as traffic manager of the BOP assembly plant in Kansas City. I returned to Detroit as assistant traffic director in that same year, later in '46, and in '49 was appointed traffic director of the division.

Q. Give us the official name of your division.

A. The official name of the division is Buick-Oldsmobile-Pontiac Assembly Division of General Motors Corporation, commonly known as "BOP".

Q. Your division is simply an operating unit of the corporation?

A. It is an operating division of the corporation. We assemble Buicks, Oldsmobiles and Pontiacs in several assembly plants throughout the country.

Q. Mr. Barrett, will you look at Exhibit 19 and tell us [fol. 387] what that exhibit is?

A. The exhibit is one photograph?

Q. Yes.

A. The first photograph is that of an Oldsmobile station wagon.

Q. Commonly known as the Fiesta?

A. Your eyes are better than mine.

(Intervenor's Exhibit No. 19, Witness Barrett, was marked for identification.)

Q. And Exhibit No. 20?

A. That is an Oldsmobile convertible.

Q. Exhibit No. 21?

A. Is a four-door sedan, commonly called a hardtop sedan. And the next one is a Pontiac.

Q. No. 22?

A. That is a two-door Pontiac hardtop.

(Intervenor's Exhibits Nos. 20, 21, 22 and 23, respectively, Witness Barrett, were marked for identification.)

By Mr. Frizzell:

Q. Mr. Barrett, are those photographs of automobiles representative of the line of automobiles which your division assembles?

A. They are.

Q. And how many color combinations do you have in those automobiles, if you know?

A. A great many. I don't know the number, but it's probably several hundred.

[fol. 388] Q. And does the customer have the option of buying various mechanical arrangements on the cars?

A. Yes, he has an option of any color or trim or mechanical combination of things that he would like to have.

Q. Would those combinations run into the hundreds, sir?

A. Yes, I would say they would.

Q. Mr. Barrett, I direct your attention to Exhibit No. 23 and ask you to tell us what that exhibit represents.

A. This represents the normal shipping areas for each of the BOP assembly plants. The name of the plant is shown within the area for each of the assembly plants. In addition, the locations of the parent or the, what we call them, home plants are shown for Buick, Oldsmobile and Pontiac at Flint, Lansing and Pontiac, respectively.

Q. Did you say that those are normal shipping areas, shown on this map?

A. Yes.

Q. And the location of the plant is the city named on the map?

A. That is correct, within the particular areas shown, except, of course, for the home plant towns.

Q. Mr. Barrett, do you have available to your division at each of those assembly plants a contract carrier motor service for the delivery of your automobiles throughout the shipping areas shown on the map?

A. With one exception, we do have the service available [fol. 389] at all of our plants for the entire area—pardon me, two exceptions. One is the state of Idaho, from our Kansas City, Kansas, plant. The other exception, of course, is from South Gate.

Q. Mr. Barrett, tell us what your duties are as traffic director of your division.

A. Generally to establish the transportation policies of the division and see that adequate transportation service is provided, both inbound and outbound, to our plants.

Q. Is your position, say, comparable to the position of Mr. Lynch, in that you control the traffic, make policies?

A. That is correct.

Q. Does your division pay the freight on the outbound delivery of new automobiles?

A. We pay all of the outbound freight on new automobiles, yes.

Q. You heard the testimony of Mr. Lynch, did you, Mr. Barrett?

A. Yes, sir.

Q. Did you hear it with respect to the requirements of his division in shipping inbound materials to the plants and so forth?

A. Requirements of those divisions?

Q. Yes, the requirements of his division to ship carload freight inbound, parts and materials?

A. Yes,

Q. Would your testimony be the same on that point?

A. It would. Practically all of our business moves in by rail carload.

[fol. 390] Q. Do you have traffic managers at each of your plants?

A. Yes, we have a traffic manager at each plant location.

Q. Does that man report to you?

A. That man reports to me, so far as policies and that type of thing are concerned, directly reports to the plant manager, as a matter of everyday practice.

Q. But insofar as transportation policy is concerned—?

A. He reports to me, yes.

Q. Who is your traffic manager at the—what is the name of your plant here in California?

A. It is the South Gate plant.

Q. Where is that located?

A. It's located in South Gate, California.

Q. Who is your traffic manager at that point?

A. Joseph F. Singerle.

Q. Is Mr. Singerle here today?

A. He is.

Q. Will he testify in this proceeding?

A. Yes.

Q. Just for the benefit of counsel, does Mr. Singerle have with him figures with respect to production and traffic distributions and—

A. He will be able to go into detail on that, yes.

Q. In the course of carrying out your duties, Mr. Barrett, do you have occasion to get reports with respect to [fol. 391] complaints about delivery services from your plants?

A. We do get such reports, yes.

Q. Have you had any complaints in the past with respect to the transportation services afforded your division at the South Gate plant?

Mr. Jacobson: Just a moment. May I ask the counsel a question?

Mr. Frizzell: Go ahead.

Mr. Jacobson: Are you going to have the principal here, or can we cross-examine this man in detail concerning these reports? If we are going to have the principal that gives him the reports—

Mr. Frizzell: We are not, Mr. Jacobson. Mr. Barrett will be examined—

Mr. Jacobson: What I have in mind is, Mr. Frizzell, your asking—

Exam. Linn: I wonder if you have an objection? Maybe we can settle it faster that way.

Mr. Jacobson: I was trying to direct the cross-examination. From what he is doing now, this man is wide open, so I will withdraw my request.

Mr. Frizzell: I will rephrase the question.

By Mr. Frizzell:

Q. Does management look to you, for example, to see that adequate transportation services are available at all your plants?

A. They do.

[fol. 392] Q. Have you encountered any problems in connection with the South Gate plant?

A. We have had numerous requests made to us through the parent division of the BOP assembly setup for truck shipment in the West Coast area, which is not available to us here as it is in the other plant areas.

Q. Mr. Barrett, referring now to your Exhibit No. 23, the map, would you tell us when the South Gate plant was established?

A. It was established in 1936.

Q. When was the Linden plant established?

A. In 1937.

Q. When was the Kansas City plant established?

Mr. Jacobson: I will object to this as incompetent, irrelevant and immaterial.

Exam. Linn: The witness may answer.

A. The Kansas City plant was established in 1946.

By Mr. Frizzell:

Q. The Arlington plant?

A. 1954.

Q. The Doraville, Georgia, plant?

A. 1947.

Q. The Wilmington plant?

A. '47.

Q. The Framingham plant?

A. '48.

Q. Mr. Barrett, when you opened the Kansas City plant [fol. 393] in 1946 did you ship by rail and by motor carrier truck out of that plant?

A. Yes, we shipped during the early part of that plant's activity about 60 per cent rail and 40 per cent truck.

Q. What is the percentage distribution today at that plant?

A. In 1956 it was 14 per cent rail and, I think, it is averaging about 10 per cent now.

Q. The Doraville plant, what is the percentage distribution of rail versus truck, what was it when you opened that plant?

Mr. Jacobson: I want to object to it on the grounds it's incompetent, immaterial and irrelevant to this proceeding.

Mr. Frizzell: It is not.

Mr. Jacobson: What will these facts, if they are established as facts, prove in this proceeding, in the matter of this application?

Mr. Frizzell: It will prove the trend that has been going on over the years. Mr. Lynch gave testimony about it. These facts will further establish it.

Exam. Linn: You may answer the question.

Objection overruled.

By Mr. Frizzell:

Q. The Doraville plant, when you opened it, what was the percentage of distribution, rail versus truck?

A. The distribution was approximately equal, 50 per cent rail and 50 per cent truck.

Q. What is it today?

[fol. 394] A. Today it's a hundred per cent truck.

Q. I won't go into all of them, but is that generally the case at all the plants?

A. Yes, we have all of our plants trucking away all of their production, with the exception of Kansas City and South Gate, and Kansas City is now about 10 per cent rail and 90 per cent truck.

Q. Your newest plant is the Arlington plant, opened in 1952?

A. That is correct.

Q. What was the distribution, rail versus truck, when you opened that plant?

A. We have never made a rail shipment from the Arlington, Texas, plant.

Q. What is your distribution at the South Gate plant?

A. It's approximately equal, 50 per cent rail and 50 per cent truck.

Q. I don't know whether I asked you or not, but are these other plants served by contract carriers?

A. Each plant is served by a single contract carrier.

Q. And the location of their facilities is where?

A. Their facilities is located on property owned by us and leased to the carriers, with the exception of the prop-

erty at South Gate, and that is leased by us and subleased to PMT.

Q. But that still is adjacent to the plant property?

A. Yes.

[fol. 395] Q. What is the reason that you have for using contract carriers in your operations?

A. We think that they provide a more efficient and satisfactory service. We can depend on them for a good job. They have been with us for a long time. And the trend, I think, is definitely towards truck, and since our experience has been with the contract carriers, we feel that they are the people we want to do it.

Q. Do you keep your contract carriers informed as to model changes?

A. We do.

Q. And do you keep your contract carriers informed as to production schedules?

A. Yes, we inform them generally about three months ahead of time and, specifically, through the local plants as changes occur or for the next meeting following period.

Q. What is your reason, Mr. Barrett, for asking Pacific Motor Trucking—let me ask you this first: Does the applicant here today serve your South Gate plant?

A. It does, and has satisfactorily for a long time.

Q. Has it served your plant since it opened?

A. Yes.

Q. What is your reason or reasons for asking, or did you, Pacific Motor Trucking Company to extend its operation in serving your South Gate plant?

[fol. 396] A. We did.

Q. And what territory did you ask them to serve?

A. We asked them to serve the states of Washington, Oregon, Montana, Idaho, Utah, Nevada and Arizona.

Q. Did you ask them to give truckaway and driveaway service?

A. We did.

Q. Or operating authority, I mean, that you asked them to acquire. What is the policy of your company with respect to truckaway and driveaway?

A. The policy of our division is to either truck or deliver by rail all automobiles, with no driveaway movement.

Q. As a matter of fact, what kind of authorities do your other contract carriers have around the country?

A. They have truckaway and driveaway authority.

Q. Why do you ask them to give driveaway, Mr. Barrett?

Mr. Burchell: I object to that as leading, calling for a conclusion.

Mr. Jacobson: He said there is no driveaway out of this plant.

Exam. Linn: I understood his answer before went to policy. If there is any need for driveaway, he may indicate what it is.

By Mr. Frizzell:

Q. Why do you ask for that?

A. To take care of emergencies which may arise through the break-down of the truckaway facilities, or plant troubles at some other plant, bordering plant.

[fol. 397] **Q.** Mr. Barrett, your testimony up to this time, as has been indicated in the case of Mr. Linn, is that there has been a trend toward increasing the use of motor carriers in trucking automobiles to the customers. Now, what is the reason for this?

A. I think that the main reason is that dealers have been preferring truck delivery; it seems to be more convenient for them. We think that the automobiles arrive in better condition by truckaway than by rail. The transit time is generally less. Very often we have to get what we call a sold car or one that is in immediate demand to a dealer as promptly as possible to cover a sale that he has made.

Q. Mr. Barrett, to what extent will you use the Pacific Motor Trucking Company's service if this application is granted?

A. Well, we will use it immediately to the fullest extent. It's hard to anticipate at the moment, but starting from our present 50 per cent truckaway out of South Gate, I would estimate that it would go immediately to between 60 and 75 per cent truckaway.

Mr. Frizzell: That is all.

OFFERS IN EVIDENCE

Mr. Examiner, I will offer Exhibits 19 through 23, inclusive.

Exam. Linn: They are received in evidence.

(Intervenor's Exhibits Nos. 19 through 23, Witness Barrett, were received in evidence.)

Mr. Smith: May we have a brief recess, Mr. Examiner, before we start cross-examination?

Exam. Linn: Very well, we will take about 10 minutes.

[fol. 398] (Short recess.)

Exam. Linn: The hearing will be in order.

Is there a further appearance?

Mr. Schlaf: Yes, Mr. Examiner. Fred V. Schlaf, traffic manager, Portland Traction Company, 1635 Southeast Water Avenue, Portland 14, Oregon, protestant.

Exam. Linn: Are the parties prepared for cross-examination of the witness?

Mr. Cronon: Yes, sir.

Cross examination.

By Mr. Cronon:

Q. Were you in the hearing room yesterday, Mr. Barrett?

A. Yes.

Q. Did you hear my cross-examination of Mr. Lynch?

A. Yes.

Q. If I were to ask you the same questions with respect to Buick-Olds-Pontiac Assembly Division of General Motors, in your position as traffic director, would your answers be substantially the same?

Mr. Frizzell: I don't think that is proper cross-examination.

A. I will answer the question by saying no; I don't recall the questions well enough to give a general answer.

By Mr. Cronon:

Q. Have you on behalf of BOP entered into any arrangement with Pacific Motor Trucking Company in the nature of a contract for their hauling the cars which are assembled [fol. 399] at your South Gate plant?

A. We presently have a contract with PMT, yes.

Q. Do you propose to enter into any additional contract with respect to the application being heard today?

A. Yes, the normal operation would be to amend the contract.

Q. Well, your new contract or your amendment thereof would be on the same basis as the old one?

A. Generally speaking, as to the terms and conditions, they would be about the same, I would say, yes.

Q. Having in mind your answer there, what tonnage have you contracted with PMT to turn over to them, or will you contract to turn over to them, if the new application is granted?

A. Isn't that between the contracting parties?

Q. Well, I thought that you would be one of the contracting parties.

A. Well, but the contract is confidential, is it not?

Exam. Linn: If you are able to respond, Mr. Barrett, will you please do so?

The Witness: Would you please repeat the question, or read it?

(The reporter read as follows:

"Question: Having in mind your answer there, what tonnage have you contracted with PMT to turn over to them, or will you contract to turn over to them, if the new application is granted?")

A. I don't know what tonnage will be in the contract.

By Mr. Cronon:

Q. Who in BOP would know that, Mr. Barrett?
[fol. 400] A. I don't think anyone in BOP would know that.

Q. You stated that you proposed to start from a present 50 per cent via truck immediately?

A. Yes; our present division at South Gate is 50 per cent truck and 50 per cent rail.

Q. And if I understood your answer correctly on direct, that would be how you would start out under this proposed operation if the application is granted?

A. I believe I said we would go immediately to between 60 and 75 per cent truck, rather than the present 50.

Q. And it follows, does it not, that that percentage figure would be reflected in any contract which is executed between the applicant and BOP?

A. No, I wouldn't say that necessarily at all.

Q. You don't think that you will cover this operation by a contract, is that correct?

Mr. Frizzell: That isn't proper cross. He said he would enter into a contract. That is, Mr. Examiner, improper cross-examination.

Mr. Cronon: Mr. Examiner, I asked him if going from a 60 to 75 per cent immediately would be within the terms of the contract. I think that is a proper question.

Mr. Frizzell: I doubt, Mr. Examiner, whether it is proper cross-examination to inquire into the provisions of a contract in this type of proceeding.

[fol. 401] Exam. Linn: I believe you have basically the information as to volume and it doesn't necessarily follow that the contract would cover the exact volume.

Mr. Cronon: But what I have in mind, Mr. Examiner, is that on a contract carrier application there has to be something definite about entering into an agreement, and I would like to inquire into what the agreement will contain. It seems to me—

Exam. Linn (interrupting): The witness has told you there will be nothing definite about it, that the best he can indicate is that the volume by truck will be increased. Perhaps that is some weakness in the applicant's case, if that is the situation.

By Mr. Cronon:

Q. Will there be any contract executed between BOP and PMT, as far as you know?

Mr. Frizzell: I object, on the ground of repetition.

Exam. Linn: Will you read the question, Mr. Reporter, please?

(Last question read.)

Exam. Linn: I believe it's repetitious.

Mr. Cronon: You said "repetitious"?

Exam. Linn: Yes.

By Mr. Cronon:

Q. Mr. Barrett, once you have gone immediately from 60 to 75 per cent by truckaway, is it the proposal of your division and you to go to a hundred per cent eventually?

A. I think that the trend is definitely towards a hundred [fol. 402] per cent truckaway. We would probably point in that direction. I don't know that we would ever reach a hundred per cent fully. It depends on a lot of factors and conditions surrounding the business as it develops.

Q. What factors have you in mind, Mr. Barrett, when you say it depends on factors developing?

A. Well, there are a number of things, I feel, that go to make up a management decision as to whether to truck or to rail our business, and the preferences of the dealers is one of the factors, the difference in damages to the automobiles, the difference in transit time, and our decision within our own policies as to which we should use.

Q. First with reference to the preference of dealers, may I conclude from that that you will honor routing instructions from your dealers?

A. No, we do not.

Q. Then, what does the preference of dealers have to do with it?

A. Some dealers prefer truck, some dealers prefer rail, and if we can accommodate them within our facilities and our general policy, we do. If we can't, then they have to come next.

Q. Whenever a customer asks for rail routing and your division feels that it is O.K. as far as their policy is concerned, then you would honor the customer's routing, is that correct?

A. Yes, if it's within our policy and our facilities at the time.

Q. But it all adds up to this; that the final answer and [fol. 403] decision is with BOP?

A. That is correct.

Q. With respect to damages to automobiles, do you find that the manner of transportation varies amongst railroads, is that what you had in mind?

A. That the—?

Q. You said damages to automobiles was one of the other factors that you had in mind.

A. I didn't get your question, I am sorry.

Q. You said that was one of the factors that would determine whether you use truckaway or rail service.

A. Yes.

Q. Now, is there some variation in the manner of handling automobiles between railroads—?

A. If I understand your question properly, we load all of our automobiles at South Gate by rail and they are all switched out by the Southern Pacific Railroad.

Q. But isn't it a fact that at the present time your automobiles are being carried by the Southern Pacific with a very small percentage of damage, considering the over-all movement?

A. I would say that the damage is relatively small, yes.

Q. With respect to transit time, that was one of the factors that you mentioned, do you feel that there is going to be an improvement in the transit time via rail which might make your division decide that they should move certain [fol. 404] shipments via rail rather than truckaway?

A. I don't know what the rail is going to do about transit time.

Q. What did you mean when you said that transit time would be one of the factors that would help you determine whether or not you will use rail or truckaway?

A. I think generally speaking truckaway provides a better transit time, although there may be certain points or certain cases where rail would provide an even better transit time.

Q. Your BOP products, Mr. Barrett, are shipped out of

South Gate now into the destination territory proposed here, are they not?

A. Yes, we do ship into all the territory in the application.

Q. Is it the proposal of BOP, like the Chevrolet Division, to eventually take all of that business away from the railroads and put all of it on PMT trucks, if this application, that is, is granted?

Mr. Frizzell: I object on the ground of repetition, Mr. Examiner.

Exam. Linn: I believe it is repetitious, yes.

By Mr. Cronon:

Q. There are shipments, are there not, Mr. Barrett, moving out of your California plant to points within the proposed territory where the Southern Pacific Company gets only a switch movement, isn't that right?

A. That is correct.

Q. And would an example of that be a movement which [fol. 405] would be switched by the SP to the Santa Fe and moved north Santa Fe-Western Pacific-SP&S-Great Northern into Montana—that would be an example, wouldn't it?

A. I assume so. I am not familiar with the exact route.

Q. What have you to say with respect to the volume of shipments moving from your South Gate plant as of the latest period, if you have it for the year '56, the volume of shipments moving out of South Gate into the territory involved in this application?

Mr. Frizzell: Mr. Examiner, I don't quite understand the question. It's vague, rather vague, "what do you have to say about a certain thing?" I think he should direct a question to the witness.

Mr. Cronon: I will change it.

By Mr. Cronon:

Q. Do you know what the volume of shipments was in 1956 moving out of your plant at South Gate via rail into the destination territory involved in this application?

A. I don't have the figures with me, but there is another witness who will have them.

Q. Would that be true of the 1955?

A. I believe he has those. I am not sure about the times.

Q. But you don't have them, Mr. Barrett?

A. I don't have them here, no.

Q. Do you ship parts and frames from eastern Oregon points into South Gate?

[fol. 406] A. Parts and frames?

Q. Yes.

A. Not to my knowledge, no.

Q. Where do you secure the parts and frames which go into the assembly of BOP products?

A. Most of the parts come from the Michigan territory, the home plant territory. Our frames come from Milwaukee, Wisconsin, Cleveland, Ohio, and Reading Pennsylvania, I believe.

Q. Perhaps I didn't put my question to you too clearly. You do ship parts and frames from eastern origin points into South Gate, don't you?

A. Eastern origins?

Q. Yes.

A. Yes, that is correct. I thought you said "Oregon."

Q. And they are moving rail, aren't they?

A. Yes.

Q. A hundred per cent?

A. Practically so.

Q. Is it a fact that very little of parts and frames move over the northern transcontinental railroads?

A. That is a fact.

Q. And that the great majority of them move over the so-called central or overland route through Omaha to Ogden and then Southern Pacific into South Gate?

[fol. 407] A. That is right.

Q. Have you any familiarity with the discussions between, for example, the Great Northern and the Southern Pacific, with respect to the Great Northern applying for its own truck rights in its own territory, looking forward to a joint arrangement with the Southern Pacific for handling General Motors business out of California assembly points into North Pacific Coast territory?

Mr. Frizzell: I object. Improper cross-examination.

Mr. Cronon: I asked him if he knew.

Mr. Frizzell: But the predicate of your question was that there were such conferences and I don't think this witness knows whether there were or not. Rephrase the question.

Exam. Linn: You may answer, if you know.

A. I don't know of any such conferences, no.

By Mr. Cronon:

Q. Are any BOP products now being distributed in the state of Washington by Transport Storage & Distributing Company after a prior rail haul to Seattle?

A. I believe that there are, although I haven't seen any actual records on them.

Q. If they are so moving, that is done with your approval under your supervision, isn't it?

A. No, sir, it is not. Such shipments we would make to Seattle to a warehouse, and they can be consigned to a dealer from the warehouse or reconsigned without our knowledge or consent or us having anything to do with [fol. 408] it. We would ship the automobiles to Seattle only.

Q. And who would be the consignee, the ultimate dealer?

A. It could be the dealer in care of a warehouse there or it could be a zone office at Seattle proper.

Q. But, in any event, they would be franchised dealers under BOP?

A. Either franchised dealers or the zone office of the car division involved.

Q. I don't understand that. I am not familiar with that. Is that the GM zone?

A. Each of the three car lines which we build, Buick, Oldsmobile and Pontiac, have their own zone offices, so-called, which is part of their sales force, and a shipment of automobiles to Seattle could be consigned to the Buick Motor Division at Seattle or to the Joe Doakes Motor Company in care of the Buick warehouse at Seattle, and after that we would have no knowledge of the movement of the car.

Q. But some subdivision of BOP would be responsible for seeing that they get into the dealer's hands eventually, isn't that right?

A. Not if they went to the warehouse point at Seattle, no.

Q. If they went to the zone office, that would be true?

A. If they went to the zone office or the warehouse, we have no knowledge or connection with the following movement.

[fol. 409] Q. Well, then, to be sure I understand you correctly, once the cars reach Seattle, then BOP is no longer responsible for the transportation beyond that point, is that right?

A. That is correct. It has been delivered in line with the order given to us by the particular car line involved.

Q. Does your division pay for the unloading of automobiles at Seattle and the transportation to the warehouse only?

A. No. Our division pays to Seattle by rail, period.

Q. That is just an f.o.b. Seattle movement?

A. That is right.

Q. Has BOP any plans for additional assembly plants in California, in the California area?

A. At the present time we, I believe, own some property in the San Francisco area which has been purchased for the establishment of a new plant, but the plans for that plant have been deferred indefinitely.

Mr. Bieneman: May I have that last question and answer read?

(Last question and answer read.)

Mr. Cronon: That is all, Mr. Examiner. Mr. Burchell has some questions.

Cross examination.

By Mr. Burchell:

Q. You mentioned what you called "a sold car". Would that be a special order for some of these options of paint and equipment that you mentioned?

[fol. 410] A. It wouldn't necessarily be special, because each automobile is produced to a certain order.

Q. I should say, a customer's order.

A. Each automobile is produced to a customer's order.

Q. How long does it take to do that?

A. I am not exactly sure. It might vary with the destination point or the dealer point and how fast his order moves through the zone office procedure and through our plant and so on.

Q. My question was, how long does it take to produce a car to a customer's order, from the time you receive the order?

A. I would say that such a car could be produced depending on how fast we had to move, anywhere from 48 hours to two weeks.

Q. It might be as low as 48 hours and it might be as high as two weeks?

A. That is right. Normally I would say the two-week period is a little closer to it. But sometimes special cars are produced in a very short time.

Q. And that two-weeks period that you mention does not include the time necessary to move it back to the particular dealer, does it?

A. I would say that it could. It's indefinite enough so that I just can't answer it that way. The time would vary too much. The transit time might be two or three days and the two-week approximation could be that far off without any trouble.

Q. You answered Mr. Cronon with respect to a switch-
[fol. 411] ing movement out of your South Gate plant by the Southern Pacific on a shipment routed to North Pacific Coast territory. On a shipment routed to Utah, say, Salt Lake, how would that shipment move by rail at the present time?

A. I believe it would probably be moving with a switch movement on the Southern Pacific and then via the Union Pacific Railroad from Los Angeles.

Q. It wouldn't move through San Francisco or Sacramento or over to Ogden and then back down to Salt Lake?

A. No, sir.

Mr. Burchell: That is all.

Cross examination.

By Mr. Farrell:

Q. Mr. Barrett, you are familiar with the scope of the authority being sought here from your South Gate plant, are you not?

A. With which authority?

Q. With the scope of the authority being sought from your South Gate plant?

A. Yes.

Q. And I note that some of the authority being sought from the South Gate plant goes over into the distribution area from your Kansas City and Arlington, Texas, plants, as shown on your Exhibit 23?

A. Yes.

Q. Can you explain that?

[fol. 412] A. The lines shown on our Exhibit 23 are, as I said, the normal distribution areas. We, as a rather standard matter, ship across those lines almost constantly, from one plant's area to another. If there are certain models we need and they are available in one plant and not in the next plant, we will overlap the shipments. As a matter of fact, we already have the authority to serve Arizona by truck, for example, from our Texas plant and we would like to have it from South Gate so that we could do this overlapping business and provide business into Arizona from here, too.

Q. Isn't it a fair statement, then, if this application is granted, that the distribution area of the South Gate plant will expand?

A. No, I would say that it will not change actually.

Q. You operate within this distribution area a number of warehouses, do you not, for the distribution of your product?

A. Yes.

Q. You operate, for example, a warehouse at Seattle?

A. We do not operate it, no. That is a private operation, not run by General Motors, as such. I believe that the—

Q. (Interrupting) It's run by a subsidiary of General Motors?

A. No. I believe that the warehouse is run by an individual, or maybe a company, the Transport Storage Company or something like that. But the operation of the zone offices, for example, at that point, which use the warehouse, is in the individual control of Buick, Olds or Pontiac [fol. 413] Divisions, not within BOP.

Q. Have you ever heard of a company at Seattle called the Argonaut Realty Company?

A. Argonaut Realty is a division of the General Motors Corporation.

Q. And that is a company that does the warehousing at Seattle, is that correct?

A. I really can't say for sure. I don't know. I know that they make arrangements for such warehousing, but if they operate the warehouses, I don't know that.

Q. But within this distribution territory, through other divisions of the General Motors Corporation, you operate other warehouses?

A. I would assume, yes. I don't know about the other divisions.

Q. And do you have any information as to the policy of how many days' supply of cars will generally be kept on hand at these various local warehouses?

A. No, sir.

Q. Or could you give us any such information with respect to the supply kept on hand at the factory, of finished products, how many days ahead that is projected?

A. We keep the supply at the factory as low as possible, less than a day if we can do it.

Q. And you specifically requested, did you, that PMT apply for a contract carrier authority?

[fol. 414] A. We did, or I did.

Q. And it was your intention that PMT would haul for no other manufacturer than BOP?

A. That is correct, BOP or Chevrolet. They haul for General Motors.

Q. Of course, as a contract carrier, they could enter into a contract to transport for another manufacturer, could they not?

A. They could, yes. We like to employ contract carriers.

though, whom we feel are dedicated to our service and not to other people.

Mr. Farrell: That is all. Thank you.

Cross examination.

By Mr. Andersen:

Q. You stated that BOP Division of General Motors will honor the request of a dealer as to the shipment of the automobiles involved if that request is within the policy, within the keeping of the policy, of General Motors at that time, if I understood your testimony correctly. Is that correct?

A. We will honor a request within our policy limitations for truck or for rail but not for specific truck.

Q. In view of the trend developing, the developing trend of the policy of General Motors to truck away as many automobiles as possible from their assembly plants, is it not a fair statement that, especially if the Commission should see fit to grant this application, that the number of requests [fol. 415] of the dealers to ship by rail would be increasingly smaller in the very near future? Is that a fair statement?

A. I don't know that to be a fair statement of fact, no. We really have very few requests one way or the other.

Q. Are you aware, Mr. Barrett, of any specific instances in any of the plants such as Doraville, Georgia, where 100 per cent of the automobiles are trucked away, of any requests by any shippers to have their automobiles sent to them by rail?

A. I am not familiar with any requests in recent years, no.

Mr. Andersen: I have no further questions.

Cross examination.

By Mr. Jacobson:

Q. I understood you to say a moment ago you had very few requests one way or the other—

A. That is, concerning rail shipments.

Q. Oh, not truck?

A. That is right.

Q. Are you familiar with the fact, or is it not a fact, that for the past two or three years there have been constant requests by your dealers in Arizona for truckaway service via existing facilities?

A. I have not heard of any requests by Arizona dealers for truckaway service on existing facilities.

Q. Have they requested, to your knowledge, truckaway service?

A. I understand that they have, yes.

Q. Have you become familiar with the fact that your [fol. 416] South Gate plant has been solicited continuously by existing carriers offering their facilities to transport your cars to points—

A. (Interrupting) I do not know that they have been continuously solicited, no.

Q. Do you know that the tariffs of the various carriers have been requested and have been on file in your office for a number of years?

A. I don't know that, no.

Q. Has your traffic director at South Gate advised you that there has been a solicitation of your business to the points that the carriers are authorized to serve?

A. No. There has been mentioned that there has been some solicitation, but it has not been specific, and I don't recall which company or companies it was.

Q. I infer from that that you weren't sufficiently interested to investigate?

A. That is correct.

Q. What, if any, investigation have you made of the existence of present truck contract or common carrier operations available to you to serve any or all the portion of the territory now sought by PMT?

A. I haven't made any.

Q. Have you requested that investigation be made, as traffic director?

A. No.

[fol. 417] Q. And I infer from that that you weren't interested?

A. That is correct.

Q. Notwithstanding the fact that you say the dealers are requesting truckaway service?

A. That is right.

Q. How long have you been familiar with the fact that dealers in the western states desired truckaway service?

A. Our complaints have been coming to us the last couple of years, I would say.

Q. And, as a result of that, you have availed yourself of truckaway service wherever you could on PMT, is that correct?

A. That is right.

Q. Then, why is it that you ship so extensively in the state of California by rail out of your plant, where PMT now has truckaway rights?

A. Well, our facilities govern that to some extent.

Q. Your what?

A. Our facilities govern the distribution of the tonnage to some extent and we feel that the longer hauls in California are somewhat comparable with the hauls to the other states, and for that reason we would like to, policy-wise, at least, sort of handle the thing in one bundle.

Q. What percentage of this 50 per cent that is now moving rail moves entirely within the state of California?

A. I don't have an exact figure on that.

[fol. 418] Q. You are familiar with the fact that PMT engages extensively in truckaway automobile movements in the state of California, are you not?

A. Well, they certainly haul a lot of automobiles for us in California.

Q. Knowing that the customers prefer truckaway service, why haven't you given PMT your movements in the state of California?

A. As I say, some of the California hauls are quite long and the establishment of service to those points would involve probably a change in some of the equipment required to haul the business, and we tie it in with the rest of the states which we now want them to do for us.

Q. Are you familiar with the equipment that PMT is operating?

A. Yes.

Q. You know that they are using standard Durability trailers, the same as the other carriers?

A. I don't know of the specific name, no.

Q. Do you know of any special facilities that they have that are not used by other carriers?

A. That I don't know. I do know that we apprise them of our new models and the difficulties involved in loading them and expect them to make their equipment fit the new model, including tie-down arrangements, which we point out to them.

Q. As traffic manager, you know that procedure is no different than any other assembly plant uses with a carrier?

[fol. 419] A. I wouldn't know.

Q. You mean, you are not familiar with what other carriers—?

A. You mean, in General Motors?

Q. Yes.

A. All assembly plants in our division do the same thing.

Q. Your competition, manufacturers of other cars, do the same thing?

A. Yes.

Q. They apprise the carriers of changes in models?

A. I don't know. I assume they should.

Q. You say, you don't know?

A. I don't know.

Q. They naturally would, they would be expected to apprise a carrier who transports their products what the changes in their products would be?

A. If they have any respect for their product, I would expect so, yes.

Q. Why do you ship rail from the BOP plant to the San Joaquin Valley, which is halfway between Los Angeles and San Francisco?

A. Of course, as I testified to sometime ago, we were planning another plant in California and that, too, became a part of our plans in this over-all picture.

Q. So there hasn't been an urgent demand for truckaway service, has there?

A. There has been a demand over the past two years for

[fol. 420] truckaway service, and sometimes more urgent than at other times.

Q. I will ask you, as traffic manager, where the line of demarcation between shipping truck and rail out of the South Gate plant within the state of California is.

A. I couldn't state the line specifically. As far as north and south is concerned, I think it's about in the area of Fresno.

Q. And Fresno is approximately 200 miles from South Gate?

A. I don't know. You are saying it, not me.

Q. Well, take my word for it.

A. All right.

Q. And you are comparing a 200-mile haul, by your last statement, with a haul into Montana and Idaho and points distant like that, aren't you?

A. How far is Phoenix, for example?

Q. Phoenix is 440 miles.

A. Well, that is comparable, I would say.

Q. You consider that comparable?

A. Yes.

Q. Well, you have had truck service available for this 200-mile haul. If there was such an urgent demand for it, why have you not utilized PMT facilities in the state of California?

A. I tried to explain to you a little while ago that it will require, we think, a change in equipment by PMT. We think that to serve these longer hauls efficiently and economically they are going to have to change from smaller rigs, to, shall we say, larger rigs, to haul more automobiles on them.

Q. Why didn't you ask them to change the equipment?

A. Because of the tie-in with the new plant, the expansion to other states and the whole problem.

Q. As an officer of General Motors, you know that the acquisition of a new plant is a matter of very recent, within the past six months, time, isn't it?

A. Perhaps the acquisition of the property, yes.

Q. When did you first use that acquisition of the property as a factor to determine not to use PMT truckwise in California?

A. We have been studying the location of a plant in this area for some five years.

Q. So I infer from that that there is no great hurry for truck service, if you waited five years within which to ask them to change over their equipment?

A. I repeat, the urgency increases and decreases as time goes by, Mr. Jacobson.

Q. Well, suppose, let's assume, that the Commission should refuse to grant the authority sought by PMT. Do you intend to, first, continue to ship to points north of Fresno via rail, as you do now?

A. No.

Q. What are you going to do?

A. We will attempt to secure another contract carrier.
[fol. 422] Q. You won't use PMT?

A. Not if they don't have the authority, no.

Q. They have the authority now.

A. To Fresno, you say?

Q. All of California.

A. You had better repeat the question.

Mr. Jacobson: Repeat the question.

(The reporter read as follows:

"Question: Well, suppose, let's assume, that the Commission should refuse to grant the authority sought by PMT. Do you intend to, first, continue to ship to points north of Fresno via rail, as you do now?")

Mr. Frizzell: Mr. Examiner, I—

Mr. Jacobson (interrupting): Just a moment.

Mr. Frizzell: I think I will pose an objection, that you are belaboring the point a little bit, Mr. Jacobson.

Exam. Linn: I believe it has exhausted its importance as far as this record is concerned.

Mr. Jacobson: I desire to pursue it along another line.

Exam. Linn: Will you reframe the question?

Mr. Jacobson: Yes.

By Mr. Jacobson:

Q. What investigation, if any, have you made, as general traffic director of BOP, as to what authority PMT has at the present time?

Exam. Linn: What difference does that make? Let's advance our own record here.

Mr. Jacobson: I thought I was advancing the record. I might be belittling the record, but I am advancing it.

By Mr. Jacobson:

Q. What percentage, do you know what percentage of the 50 per cent that is moving via rail out of BOP-South Gate is moving in California?

Mr. Frizzell: Just a minute. Pardon me.—

Mr. Jacobson: If you have somebody else who has those records—

Mr. Frizzell: Phil, the local traffic manager will be here with some specific figures.

Mr. Jacobson: In other words, I am to understand that this witness doesn't know?

The Witness: I have already answered, to that effect.

By Mr. Jacobson:

Q. You don't know?

A. I say, I don't have the figures with me.

Q. Is it possible, from your investigation, when you arrived at the figure, that immediately you go from 60 to 75 per cent, that what you will actually do is give PMT the traffic they could have enjoyed for a long time in California?

A. That is not correct, no.

Q. So the 15 per cent will be the over-all increase you are going to give them?

A. That is the over-all immediate increase.

Q. Now, do you subscribe—well, perhaps I had better [fol. 424] ask you a direct question. Assuming the Commission, the Interstate Commerce Commission, should refuse to grant this authority or delay it for a couple of years, what is your company going to do with respect to getting truckaway service? Will you use the existing facilities?

A. No, sir.

Q. You wouldn't use any of the protestants in this case, is that correct?

A. That is correct.

Q. And you make that observation without knowing what they have, what they offer, their facilities or their territory?

A. That is correct.

Q. Where are you going to find this truckaway service? Is General Motors going in the trucking business for BOP?

A. If we are unable to get it, or rather PMT is unable to get it, and we are unable to have another contract carrier get a similar authority or permit, then we will consider doing it ourselves, yes.

Q. You are not here complaining about the ability of the existing facilities to render you service, are you?

Mr. Frizzell: I object. He hasn't testified he knows anything about the existing services.

Mr. Jacobson: I think it's pertinent.

Mr. Jacobson: I urge the question. It's a direct question.

Mr. Johnson: Would you mind reading the question?
[fol. 425] Did you say "existing facilities"?

(Last question read.)

By Mr. Jacobson:

Q. You are not here complaining about the inability of existing authorized carriers to render a service into the territory they are authorized to serve, are you?

Mr. Frizzell: I object to that because he hasn't testified that he knows anything about existing services. So actually he has not said that he is not complaining or that he is complaining.

Mr. Jacobson: I will submit it to a ruling.

Mr. Johnson: I would like to join in the objection. The question is not clear. Does "existing carriers" include the PMT?

Mr. Jacobson: No, I exclude the PMT.

Mr. Johnson: It is an existing carrier.

Mr. Jacobson: There seems to be some question about it.

Exam. Linn: The witness may state whether he has any complaint concerning carriers other than PMT.

Mr. Jacobson: That is correct.

A. No, I haven't had any complaint, because we have had no experience with them.

By Mr. Jacobson:

Q. You know that, as a matter of fact, on occasions authorized carriers have moved vehicles out of your South Gate plant to the adjoining states, don't you?

A. No, I don't believe so. I understand that there was a [fol. 426] shipment which moved from somewhere near our South Gate plant to Arizona.

Q. Moved satisfactorily, wasn't it?

A. I really couldn't say. I wasn't on the other end and didn't know it had happened until afterwards, Mr. Jacobson.

Q. And after you found out what had happened you didn't get any complaints, did you?

A. No.

Q. Was it a mistake that he got the car?

A. I think it probably was.

Q. As I understand it, at the South Gate plant—that plant is owned by the General Motors, isn't it?

A. That is right.

Q. And the rail siding comes onto the property of the South Gate plant, doesn't it?

A. Yes.

Q. Is the rail siding an easement owned by the Southern Pacific?

Mr. Frizzell: I object. I think that is improper cross-examination.

Mr. Jacobson: I think it's pertinent. I will tie it up.

Mr. Frizzell: He went into this thing with Mr. Booth and Mr. Booth gave him the facts about it.

Exam. Linn: The witness may answer, if he knows.

The Witness: I don't know.

By Mr. Jacobson:

Q. What, if any, other railroad besides Southern Pacific [fol. 427] serves your property?

A. Southern Pacific is the only one serving our property.

Q. You testified that insofar as the release of automobiles is concerned, you leased and subleased—do I infer from that that you are leasing that parcel of property from a third party?

A. Yes. We lease the property on which PMT is located from the Southern Pacific Railroad.

Q. You lease the property from the Southern Pacific Road?

A. That is correct.

Q. And you sublease it to PMT?

A. That is right.

Q. Under a written lease?

A. That is correct.

Q. Do you know what the rental is?

A. I am not familiar with the figures.

Q. Is that lease available here in the courtroom?

A. I don't know that for sure.

Q. Have you ever seen it?

A. I have seen it. I have a copy of it in my files at home, yes.

Q. Do you know whether the rental charge to the PMT is comparative with rental for similar facilities in the same area?

Mr. Frizzell: I object.

Mr. Jacobson: Just let me ask the question, please.

Mr. Frizzell: The first three words were objectionable. [fol. 428] Mr. Jacobson: Extend me the courtesy of allowing me to ask the question.

Will you read the question, please.

(Last question read.)

Mr. Frizzell: He can't answer that question, because he just stated on cross-examination that he didn't know what the figures were.

Mr. Jacobson: He said he had the lease, but it wasn't with him.

Mr. Frizzell: He testified that he didn't know what the figures were. How can he make a comparison?

Mr. Jacobson: Will you agree to submit the lease so we can look at it?

Mr. Frizzell: No.

Mr. Jacobson: I think it's pertinent to the issues to this case.

Mr. Frizzell: I do not.

Exam. Linn: Do you have any further questions of the witness?

Mr. Jacobson: Can I get an answer?

Exam. Linn: The witness said he didn't know what the rental was.

By Mr. Jacobson:

Q. How long is the lease for?

Mr. Frizzell: I object, as immaterial to this proceeding.

Exam. Linn: Overruled.

A. The lease is for a period of five years, with a renewal [fol. 429] option for five years.

Q. Does General Motors reserve the right to have ingress or an egress for their own vehicles or for any designated vehicles over that property?

A. I am not familiar enough with all the print to know.

Q. As I understand it, you lease this property from the Southern Pacific and sublease it to PMT. Is the rental that you pay the Southern Pacific the same rental that you charge PMT?

Mr. Frizzell: I object, Mr. Examiner.

Exam. Linn: The witness may answer it, if he knows.

A. I believe that that is the case, it's precisely the same.

By Mr. Jacobson:

Q. As traffic director, can you tell me the advantage of your leasing the property and then subleasing it, insofar as your operations are concerned?

A. We have along with the lease arrangement an option to purchase the property, which we intend to do, so that it will become the same as the rest of our plants.

Q. Do you reserve the right, or have you the right, to advise PMT that you want another carrier to traverse that property to come to your receiving gate?

A. Without having all the terms of the lease here, I cannot answer the question, no.

Q. Is there any other method by which cars can move

from your delivery gate to a public highway, other than over the property of Southern Pacific leased to PMT?
[fol. 430] A. No, that is the only way we can get to the public highway.

Q. Haven't other carriers, or do you know whether other carriers have, gone over that property to receive vehicles for the government, on government bills of lading?

A. We do not make government bill-of-lading shipments from South Gate plant.

Q. Due to your familiarity with the traffic situation, don't you know it to be the fact that PMT, as a truck carrier, as a common carrier, delivers parts into the South Gate factory and likewise takes parts from the South Gate factory for delivery to dealers throughout the state of California?

A. To the best of my knowledge, PMT as a common carrier does not serve the South Gate plant either inbound or outbound.

Q. What investigation have you made of that, if any?

A. I have inquired from our plant traffic manager.

Q. How recently?

A. Within the last week.

Q. Within the last week?

A. Yes.

Q. And he told you they didn't, is that it?

A. That is correct.

Q. Is that the witness who is going to be here?

A. He will be on the stand.

Mr. Jacobson: Go ahead.

Cross examination.

[fol. 431]

By Mr. Smith:

Q. Mr. Barrett, what make of car does General Motors manufacture at its plant at Lansing, Michigan?

A. Oldsmobiles.

Q. Do you know what truck companies transport Oldsmobiles from Lansing, Michigan, to points throughout the United States?

A. Not specifically. They have two or three carriers, and I don't know all the official names of them.

Q. To refresh your memory or recollection, do you know of a company called "Howard Sober, Inc."?

A. Yes, I believe they serve Lansing—that is one of them, I am familiar with that name, yes.

Q. Did you likewise know that Howard Sober, Inc., was a common carrier and not a contract carrier?

A. Yes.

Q. Do you likewise know that Howard Sober, Inc., in addition to hauling Oldsmobiles as a common carrier, also hauls all other makes of cars?

A. So long as he is a common carrier, I assume that he could. I don't know that he does, though, no.

Q. You don't know that he does. Did you ever hear of a motor carrier called "C & J Commercial Driveaway, Inc.", of Lansing, Michigan?

A. Yes.

Q. Did you know that they are a common carrier?

A. I understand they are, but I don't really know of my [fol. 432] own knowledge.

Q. Do you know that they likewise haul Oldsmobiles out of Lansing?

A. I, of my own knowledge, no, I don't know that.

Q. Did you ever hear of a motor carrier in Lansing by the name of "Industrial Transports, Inc."?

A. Yes.

Q. Did you know that they were a common carrier?

A. I have so heard. I haven't checked their authority.

Q. Did you know that they also haul Oldsmobiles?

A. I believe they do.

Q. Did you know or do you know that those three carriers, in hauling Oldsmobiles as common carriers out of Lansing, Michigan, not only transport Oldsmobiles in direct single-line service, but also in two-line or connecting carrier service?

A. I don't know that.

Q. What make of General Motors passenger car is manufactured at the GM plant at Flint, Michigan?

A. I believe that Buicks are manufactured in one plant and Chevrolets in another.

Q. Referring to the Buick plant, do you know the motor carriers that are serving the Buick plant?

A. I believe that Boutell is one of them.

Q. The F. J. Boutell Company, is that the one you are referring to?

[fol. 433] A. Yes.

Q. That is one of them. Now, the Boutell Company is a common carrier, is it not?

A. Yes.

Q. And that company likewise hauls for, hauls cars and trucks for, other manufacturers?

A. I don't know.

Q. What other carrier do you know that serves the Buick plant at Flint?

A. I believe there is another one called "Automobile Carriers", I think is the name of it, "Carriers" or "Shippers", I am not sure.

Q. That is "Auto Carriers"?

A. Yes.

Q. And they are a common carrier?

A. Yes.

Q. And what General Motors cars are manufactured—

Mr. Smith: Strike that.

By Mr. Smith:

Q. What General Motors product is manufactured at Pontiac, Michigan?

A. The Pontiac automobiles and General Motors trucks, I believe.

Q. And do you know the motor carriers that transport the Pontiac automobiles out of the Pontiac plant?

A. I believe that the F. J. Boutell Driveaway Company is one and I believe Contract Cartage is another one. I am [fol. 434] not sure about Contract.

Q. Contract Cartage, despite its name is a common carrier rather than a contract carrier, is it not, Mr. Barrett?

A. So I understand.

Q. Can you recall any others?

A. Motor Car Transport, I believe, is another one.

Q. And that is a common carrier?

A. Yes, sir.

Q. And those common carriers, did you know, likewise transport other makes of automobiles?

A. I would assume so.

Q. Doesn't General Motors manufacture a truck at Pontiac?

A. Yes.

Q. What is the name of that division?

A. It's the General Motors Truck & Coach Division, I believe, is the official name.

Q. They make buses there also, do they not?

A. That is right.

Q. And do you know the motor common carriers that are transporting the trucks and buses out of Pontiac?

A. I am not so familiar with them. I couldn't give you the proper names. There is an "Industrial" or something like that—

Q. Did you ever hear of Truckaway Corporation?

A. Yes, I believe that is one of them.

Q. Is that one of the carriers?

[fol. 435] A. I think so.

Q. Is that a common carrier?

A. As far as I know, it is. I don't really know.

Q. Did you ever hear of a motor carrier called "Fleet Carriers, Incorporated"?

A. Yes, the name is familiar.

Q. Doesn't that company haul the GMC trucks and buses out of Pontiac?

A. I believe so.

Q. And that company is a common carrier?

A. As far as I know, they are, yes.

Q. What General Motors cars are manufactured in Detroit, Michigan?

A. Cadillac, I believe, is the only one.

Q. And do you know the Cadillacs are transported—

Mr. Smith: Strike that.

By Mr. Smith:

Q. Do you know what motor carriers transport the Cadillacs from Detroit?

A. I am not familiar with their distribution system in Detroit.

Q. Did you ever hear of my client, Western Auto Transports, Inc.?

A. Only as a name.

Q. If that is all you know of them, I suppose you wouldn't know that for the past 20 years they have transported Cadillacs from Detroit to points in all the 11 western states? [fol. 436]

A. I wouldn't know that.

Q. You wouldn't know that?

A. No.

Q. Did you know that Western Auto Transports, Inc., was a common carrier?

A. No, I don't know enough about them to know that.

Q. Did you know that they presently hold authority to transport new automobiles from South Gate to all points in Utah?

A. I don't know that, no.

Q. Has any representative of Western Auto Transports, Inc., ever solicited your South Gate traffic?

A. I don't know that. You mean at South Gate, I assume?

Q. Yes.

A. I don't know.

Q. Are you aware of the fact, sir, that there is now an application pending before the Interstate Commerce Commission in which Howard Sober, Inc., and Industrial Transports, Inc., and C & J Commercial Driveaway, Inc., are seeking authority to transport passenger cars from Lansing, Michigan, by the truckaway method to all points in the 11 western states?

A. I understand there is such an application, yes.

Q. There has been a partial hearing on the application which has already been held in Washington, D. C., has there not?

A. I believe that is correct, although I wasn't there.

Q. That is correct. I was.

[fol. 437] Q. If it is a fact that General Motors Corporation, out of its plants in Lansing, Flint, Pontiac and Detroit, Michigan, uses motor common carriers in both single-line and two-line service, how can you reconcile your testimony and the testimony of Mr. Lynch to the effect

that it is a policy of General Motors Corporation not to use common carriers?

A. I don't think that Mr. Lynch or I spoke for General Motors Corporation, as such. Each division of the corporation handles its own transportation. And the application that you are talking about is from the home plants of Buick, Olds and Pontiac?

Q. That is right.

A. Those are separate divisions of the corporation and have no connection, actually, traffiewise with BOP or Chevrolet.

Q. Why would it be necessary that a Chevrolet be transported by a contract carrier and couldn't be transported or shouldn't be transported by a common carrier, while at the same time an Oldsmobile or a Cadillac can be transported by a common carrier and not by a contract carrier?

A. I can hardly speak for Chevrolet on that matter.

Q. You mean, you can't answer that question?

A. That is right. Not on behalf of Chevrolet, I cannot answer it.

Q. Why is it, can you explain this to me, that General Motors Corporation has to transport an Oldsmobile out of Lansing by a common carrier, but at the same time, with [fol. 438] the same type of car, Oldsmobile, out of South Gate by a contract carrier?

A. Frankly, I think the poor guys at Lansing are stuck with what they have got.

Q. I just got through hearing the traffic manager of the Oldsmobile plant at Lansing, Mr. Corbin, testify down at Washington last month as to the extremely satisfactory service, common carrier service, that he had to the territory in which his carriers were authorized to serve. Will you disagree with Mr. Corbin?

Mr. Frizzell: I object, Mr. Examiner, to that question.

A. I wasn't there.

Mr. Jacobson: Well—

Mr. Smith: If you want to ask the questions you want, you ask them. I will ask the questions I want, Mr. Jacobson.

I have just one or two more.

By Mr. Smith:

Q. Did you request the applicant in this proceeding to file this application?

A. I did.

Q. Did you or anyone in your company request any other motor carrier or motor carriers to file a similar application or applications?

A. No, sir.

Q. As to what determines your choice of whether to use motor carrier service or rail service, sir, isn't the determining factor the factor of rates?

[fol. 439] A. That is only part of the factor, one of the factors. There are many factors involved in making that decision.

Q. I know, but isn't rates a very substantial factor?

A. I don't think it's any more substantial than service and these other factors at all, no.

Q. You wouldn't concede that it is the controlling factor?

A. I would not. As a matter of fact, we ship—

Q. (Interrupting) I just asked you that question—that is all.

Mr. Johnson: Let the witness complete his answer.

By Mr. Smith:

Q. Do you want to explain your "no" answer?

A. I would like to explain another example of that same policy.

Q. I didn't ask you for an example. I just asked for a "yes" or "no" answer. I don't think it needs any explanation.

Mr. Smith: I asked him if he agreed with me and he said no. I don't think it called for an explanation. I didn't ask him why he didn't agree with me.

The Witness: After all the time you have wasted, can I waste two minutes?

Exam. Linn: Go ahead, Mr. Barrett.

By Mr. Smith:

Q. Go ahead, Mr. Barrett.

A. As a matter of fact, from our Kansas City plant we are presently shipping automobiles by rail at a greater cost to us than we could ship them by truck, so that the cost is not a determining factor.

Q. Do you think I have wasted my time in cross-examining you?

[fol. 440] Exam. Linn: Now we are going to waste it.

Are you finished, Mr. Smith?

Mr. Smith: That is all.

Exam. Linn: We will take about a five-minute recess and continue until 12:30.

(Short recess.)

Exam. Linn: We will be in order.

Mr. Smith: With Mr. Frizzell's permission, may I ask the witness a few more questions?

Exam. Linn: Go ahead.

By Mr. Smith:

Q. Mr. Barrett, when I asked you whether or not rates was the controlling factor in determining whether you ship by rail or by truck, in explaining your negative answer you cited an example or referred to a case where the truck rate was higher than the rail rate, but you used rail. Out of what points and to what points does that situation exist today?

A. I don't believe that was quite the answer.

Mr. Cronon: You had it turned around, where the rail rate was higher than the truck rate.

By Mr. Smith:

Q. Where the rail rate was higher than the truck rate, and you used the rail service?

A. Yes.

Q. Out of what point?

A. Kansas City, Kansas.

Q. To where?
[fol. 441] A. It would be hard to name particular points, but I would say generally into the northwest part of the Kansas City area.

Q. Was that because the truck service was too poor to those points, that you didn't want to use it?

A. No. We do use truck service there, too.

Q. One more point. You said that you felt sorry, or the poor boys up in Michigan were stuck with common carrier service and that is why they used it. Isn't it a fact, Mr. Barrett, that at Flint, Michigan, the Chevrolet plant has contract carrier service available and the Buick plant has common carrier service available?

A. I understand that is correct, yes.

Q. Then, why doesn't Buick make a contract with the Chevrolet contract hauler?

A. I was employed by Buick from about 1929 to—I am sorry, from '32 to '41, and at that time the operators who are serving the Buick plant, now were serving that plant, the truckaway operators, and did ship by truck and by rail, and the assembly plant policy of using contract carriers was established sometime after that, so that we did not want to toss out an old supplier friend.

Q. This old friend to which you refer, this common carrier, isn't it a fact that about two years ago that old friend sold out to another carrier?

A. Are you referring to—?

[fol. 442] Q. Walter Carey purchase of the operating rights, a portion of the operating rights, of Motor Car Transport.

A. Walter Carey, I believe, was working for Motor Car Transport when I was at Flint, so he is still our old friend, I believe.

Q. He is a friend of mine, too.

Mr. Smith: That is all.

Mr. Handler: I have no questions.

Cross examination.

By Mr. Bieneman:

Q. As to this situation in California north of Fresno, isn't it a fact simply that the rail rates are the same to San Francisco as they are to Fresno, so that from 200 to 400 miles you can ship the cars for the same rate?

A. I don't know that the rates are the same to both points, no. I don't know that they are the same.

Q. You know that basically that is the reason that you use rail service into northern California, because the rate situation is such that the trucks can't compete with small equipment, isn't that right? Isn't that true?

A. Yes, the equipment, I believe, does make the difference.

Q. And if the PMT saw fit to utilize larger equipment that would haul six automobiles, as you have indicated, then probably the truck rates could be put on a par and you would use the truck service, isn't that true?

A. I believe that is true, yes.

Q. How long has that situation existed, where apparently [fol. 443] there has been no effort on the part of the PMT to put on this type of equipment that you say would be suitable to compete with the rail rates?

A. In our judgment, it's just a bit of a question as to whether that equipment should be put on for that part of California, and we have preferred to make it a part of this project to expand the truck service in to the rest of the states.

Q. What you mean by that, I think, is that you don't know whether there is sufficient volume into that area in California alone to justify the cost of purchasing and maintaining that equipment, isn't that right?

A. Or perhaps two types of equipment, yes, that is generally the case.

Q. But if the PMT gets this other territory and therefore a larger volume of traffic on long hauls, then you feel that it would justify acquiring this other type of equipment and the cost could be spread over a greater volume of traffic?

A. Yes.

Q. There is no practical reason at the present time why the PMT could not acquire that equipment into northern California if they sought to do so, is there?

A. No.

Q. And there is no practical reason why you could not use the PMT's existing truck service to northern California with their small equipment, is there?

[fol. 444] A. No.

Q. The only reason, then, is rates, isn't it?

A. They would still have to purchase some additional equipment. They couldn't serve the balance of California with their present fleet.

Q. Then, basically the only reason that you are not using the truck operation from Fresno north is an issue of rates, is it not?

A. I would say that it involves more than the rates.

Q. What more?

A. The things that I have mentioned before, the matter of deciding, first, getting an answer to this application and deciding whether the, balancing the complaints, the policy, the service and all the rest of it together.

Q. Let me put it to you this way: If the PMT could offer you today, on their present smaller equipment, rates comparable to rail rates into northern California, would you then use the PMT service?

A. I don't know. I haven't considered that actual matter.

Q. At the present time, I take it, PMT rates into northern California are substantially higher than the rail rates, are they not?

A. I believe they are.

Q. Are you at all familiar, Mr. Barrett, with the circumstances surrounding the rail rate reductions from the Los [fol. 445] Angeles area into Arizona, as to which I questioned Mr. Lynch.

A. I understand they have made some reductions, yes.

Q. Do you recall at the time those reductions were proposed in September 1955 whether you or anyone in the BOP Division made any representations to the railroads to the effect that those reductions were required in order to avoid diversion of traffic to competitive motor carriers?

A. No, such a representation was not made. We pointed out to the Southern Pacific that we felt their rates were a little high and they took the action in reducing the rail rates, but there was no threat of diversion.

Q. And you recall also, do you not, that after that matter was set for hearing in January or February of 1956 the railroads withdrew those reductions without going to hearing?

A. I believe they did, yes.

Q. And was it within thirty days thereafter that you requested them to file this application for truck rights into Arizona?

A. We have made no request for them to file truck rights into Arizona, up until this point.

Q. That was Chevrolet, I am sorry. That was not BOP, was it?

A. That is correct.

Q. You indicated that you did tell them in September of 1955 or at sometime thereabouts that you thought the rail rates were too high. In your best judgment, was that the factor that caused the railroads to make the publication of [fol. 446] those reduced rates at that time?

A. I really don't know whether it was their main factor or not.

Q. After they withdrew those reduced rates, leaving in effect the then-existing rates, did you divert any traffic from rail to any truck service?

A. No, we did not.

Q. I think you said that you did indicate that the rates at that time, in your opinion, were too high. Did you mean by that too high in relation to truck rates?

A. Too high in relation to either the existing truck rates or truck rates as they might be made, provided we had some authority for PMT to serve that territory. You see, we had been considering this problem for sometime and those rail rates—

Q. Isn't it true that after those reductions were withdrawn the Southern Pacific turned around and, in lieu of those reductions, made you an allowance for unloading and delivery of the automobiles at destination points?

A. No, I would say that, so far as I know, there is no connection between that and the unloading allowance. That was something brand new to us. We hadn't even discussed it with them.

Q. I didn't mean that they were necessarily discussed, but the thing that followed withdrawal of the reduced rates was an allowance at the unloading point, was it not?

A. I believe it was. As a matter of time, it was afterwards. I don't know what the connection was.

[fol. 447] Q. Did the fact that the railroads published that allowance at destination have anything to do with your failure to use competitive truck service?

A. No.

Q. In other words, whether you would have that allowance or not, you would still continue to use the rail?

A. That is correct.

Q. At least, as a matter of history, and regardless of what the reasons might have been, you now have from the railroads an allowance both at origin and destination covering alleged costs of loading and unloading, do you not?

A. I believe we have that to some destinations, yes.

Q. And the basic purposes of those allowances, at least so far as the railroads are concerned, is to attract the traffic to them in view of the fact that you have to perform loading and the dealer has to perform unloading?

A. I believe that is the reason for it, yes.

Q. Can you give me any idea, on the basis of this application, if granted, what truck rates are proposed, in relation to the existing rail rates, in territories outside of California itself?

A. No, sir, I can't tell you what they might be.

Q. If, for example, the rates that are established by the PMT were on a scale similar to those which exist in northern California, would you then use PMT at that higher [fol. 448] rate or would you continue to use rail at the lower rate?

A. I am sure we would use PMT if the other conditions warranted it, yes.

Q. What do you mean by that?

A. Transit time and the better handling of the automobile, all the other factors that I talked about.

Q. If those factors are important to you, rather than the rate, why is it you haven't made use of that very excellent truck service into northern California?

Mr. Frizzell: It's been asked and answered, Mr. Examiner.

Exam. Linn: Sustained.

By Mr. Bieneman:

Q. Do you have any idea how much investment in truck equipment would be required if you were to give the PMT the traffic into northern California which is now moving by rail?

Mr. Frizzell: I object, as there having been laid no foundation for that kind of a question. Mr. Booth testified about those factors for PMT and I don't see how Mr. Barrett could possibly contribute anything in that connection.

Mr. Bieneman: To avoid a lot of argument, I will reframe the question. I don't want to ask Mr. Barrett about PMT's business.

Let's put it this way:

By Mr. Bieneman:

Q. Can you tell me what the approximate volume is, that is moving by rail, to points north of Fresno?
[fol. 449] A. I don't have that figure, no.

Mr. Bieneman: That is all.

Mr. Beardsley: No questions.

Cross examination.

By Mr. Singer:

Q. Do you have interstate contract carrier service available at each of the assembly plants shown in Exhibit 23?

A. Except for South Gate, California, yes.

Q. PMT is authorized to perform some interstate services as a contract carrier from that plant, are they not?

A. I believe only to the ports, and we have none of that type of business.

Q. With the exception of PMT, are all of the assembly plants shown on Exhibit No. 23 served by motor contract carriers who are not affiliated with or controlled by a railroad?

A. I believe that is correct, yes.

Q. They are all independent motor carriers, are they not?

A. To the best of my knowledge, they are.

Q. Is the contract carrier, or carriers, serving your Kansas City and Arlington, Texas, plants controlled by a man who also controls a common carrier engaging in the transportation of automobiles?

A. I understand that is a fact, yes.

Q. Is that Mr. Roy Woods?

A. That is right.

[fol. 450] Q. Does that situation exist at any of your other assembly plants, where the contract carriers serving your company are controlled by persons who also control common carriers engaged in the transportation of the same or a similar type of commodities?

A. I don't know, no.

Mr. Johnson: I would be perfectly happy to stipulate that the parties may refer to the record in that Arlington case.

Mr. Singer: Well, I don't see any necessity for it.

Mr. Frizzell: Then, why are you going into it?

Mr. Singer: I think it's a very pertinent line of cross-examination. I have no knowledge of what was in this Arlington record and therefore wouldn't want to stipulate.

By Mr. Singer:

Q. Is it the policy of your company, the BOP Assembly Division of General Motors, to have, say, your contract carriers on the same basis as described by Mr. Lynch?

A. Yes, I would say so.

I would like to correct one answer, if I may. I said I knew of no other situation where there was a question of common control, which you asked me, and—

Q. In other words, Mr. Roy Woods controls a common carrier and also controls two contract carriers, one serv-

ing your Kansas City assembly plant and another contract carrier serving Arlington, Texas?

A. That is correct. I had forgotten the Arlington.

[fol. 451] Q. I didn't mean to mislead you, but—

A. That is all right.

Q. (Continuing) —but my question was directed to that.

Q. Do you have a carrier other than the contract carrier that serves the assembly plants shown on Exhibit No. 23, with the exception of South Gate, who performs intrastate services for your company; in other words, a second carrier at Wilmington, for example, who would perform some intrastate service?

A. Well, we have a single carrier at all plants who performs both intrastate service and intrastate service.

Mr. Singer: Thank you. That is all the questions I have.

Cross examination.

By Mr. Earp:

Q. Mr. Barrett, I would like to clear up one or two problems here in connection with this warehousing which was referred to earlier, sir. Now, isn't it a fact that on your warehousing at Seattle, Washington, those cars are shipped via rail directly to the Buick Division, the Pontiac Division or the Olds Division of General Motors Corporation, a portion of your cars?

A. I believe that is correct, yes.

Q. Do you know whether or not those divisions are billed by Transport Storage & Distributing Company for their unloading services, their transportation of those cars to their warehouse and for their warehousing?

A. I don't know.

[fol. 452] Q. Do you know whether or not Argonaut Realty Company, which is a subsidiary of General Motors Corporation, in turn, pays Pontiac Division, Buick Division and Oldsmobile Division for the services which have been performed?

A. I don't know that, either.

Q. Do you know how many years Transport Storage & Distributing Company has been serving General Motors

and its subsidiary in performing these services in Seattle, Mr. Barrett?

A. No, sir, I don't know how many years.

Q. Would you agree with me if I said it was more than 25 years?

Mr. Frizzell: Just a minute. I want to interpose an objection, Mr. Examiner. The premise of these questions, of these last two questions, is that there is an arrangement between General Motors and Transport Storage & Distributing Company, and there is nothing in the record to indicate that there is any such arrangement.

Mr. Earp: We will bring that out on direct, Mr. Frizzell.

Mr. Frizzell: Then, I think you must rephrase your question, Mr. Earp.

Mr. Earp: Very well.

By Mr. Earp:

Q. You are acquainted with Transport Storage & Distributing Company, are you not, Mr. Barrett?

A. Some. Not very much, I am afraid.

Q. You may have answered this before, but do you know whether or not they have been serving General Motors [fol. 453] Corporation and its subsidiaries for a longer period of years?

A. I have been told by Mr. Tarte that they have been there for a long time. I don't know actually.

Mr. Frizzell: Can we get the record straight on this, Mr. Examiner?

Exam. Linn: The record may stand as made up to this point.

You may go ahead.

Mr. Earp: Thank you.

By Mr. Earp:

Q. You also ship cars to Alaska, do you not, Mr. Barrett?

A. Not to my knowledge.

Q. Do you know whether or not the Buick Division,

Oldsmobile Division and Pontiac Division ship cars to Alaska?

A. I assume that they do. I am not prepared to say. I haven't seen their records.

Q. Does the traffic department know whether you are processing cars for shipment to Seattle which are then destined to Alaska?

A. Our traffic department?

Q. Yes, your traffic department, under your direction and control.

A. I don't believe that they know that, no.

Q. With respect to this warehousing that is being performed at the present time by the Argonaut Realty Company, have you, in forming this policy which you have enunciated here, have you discussed with them as to [fol. 454] whether or not this warehousing that is being performed will be continued if you initiate direct truck-away movement?

Mr. Frizzell: I object to the question. There has been no showing on this record that Argonaut Realty Company is engaged in any warehousing operation.

Mr. Earp: He stated on cross-examination earlier that Argonaut Realty was a subsidiary of General Motors Corporation and that they were engaged in warehousing.

Mr. Frizzell: I don't think he did.

Exam. Linn: If there is any change in the method of distribution, he may so state.

By Mr. Earp:

Q. Would you answer the question, please?

A. The matter has not been discussed, no.

Q. Do you know whether or not your warehousing program will be continued if you initiate direct truckaway shipments of automobiles, your automobiles?

A. I have no way of knowing that. The warehouses are operated by divisions other than the BOP division and we ship automobiles to the destination points which they furnish us.

Q. Isn't it true, Mr. Barrett, that there are absolutely no

advantages to BOP in shipping automobiles to warehousing via a direct truckaway service?

A. I would say that—

The Witness: Would you read the question, please?

(Last question read.)

[fol. 455] A. No, that is not true.

By Mr. Earp:

Q. What advantages are there, sir?

A. The advantages, so far as we are concerned, are the same advantages that can be afforded to dealers with direct service, and, to repeat, there are delivery of automobiles, better transit time and in better condition.

Q. Why is transit time important to you, when automobiles are going into storage for some period of time? Will you explain that, please?

A. Very often dealers, I understand, order automobiles for delivery to a warehouse, and the time in transit is important to get the car to the warehouse for delivery to the dealer, as well as to a dealer directly.

Q. If the dealer wants the car, then it's not going into the warehouse for storage. I am talking about cars that are going in for storage. Where is time in transit important on those cars?

A. That would be up to the particular division involved. They might want to maintain a smaller stock of cars. I don't know.

Mr. Earp: That is all.

Exam. Linn: Are there any further questions on cross?

(No response.)

Exam. Linn: Redirect?

Mr. Frizzell: Yes.

Redirect examination.

[fol. 456] By Mr. Frizzell:

Q. Mr. Barrett, in your direct examination you gave the history of your experience and you testified that you used to work at the Pontiac Division plant in Pontiac, Michigan.

A. That is right.

Q. When was that?

A. From 1929 to 1932.

Q. Were the trucking companies named by Mr. Smith in his cross-examination of you there serving that plant at the time you were there?

A. Yes.

Mr. Smith: I object to that question. Going back to 1932 is slightly remote. What the situation was at that time, I don't think, has any bearing as to what the situation is today. I was asking about the situation today, not what it was in 1932.

Exam. Linn: That goes double, Mr. Smith.

You may answer, Mr. Barrett.

Objection overruled.

By Mr. Frizzell:

Q. Will you answer?

Exam. Linn: I believe the answer was in the affirmative.

The Witness: Yes, it was.

By Mr. Frizzell:

Q. When did General Motors start the Buick-Oldsmobile-Pontiac Assembly Division operations?

A. In 1936.

Q. That is when they started assembling automobiles [fol. 457] in assembly plants around the country?

A. That is correct.

Q. When they went into that type of operation, is that when they established—

Mr. Handler (interrupting): This is going to be leading, Mr. Examiner. This is redirect examination.

Mr. Frizzell: All right, I will rephrase it.

By Mr. Frizzell:

Q. And when they went into the assembly plant operation what type of motor carrier service did they adopt as a policy?

A. They adopted the policy of single contract carriers to serve the assembly plants.

Q. Did the corporation undertake to make that policy retroactive?

A. No.

Mr. Frizzell: That is all.

Exam. Linn: Is that all the examination?

Mr. Smith: I have some questions.

Recross-examination.

By Mr. Smith:

Q. Mr. Barrett, if you are retaining these common carriers at the parent plants in Lansing, Flint, Pontiac, Detroit for sentimental reasons, because they are old friends and have served you for years, why aren't you equally sentimental toward the protesting rail carriers in this proceeding? They are old friends who have been serving you [fol. 458] for years, are they not?

A. Yes.

Q. Now answer my question.

Exam. Linn: Well, we have had a day and a half on that already.

Mr. Smith: Not on the reason of why they are using common carriers for sentimental reasons. That just came out a few minutes ago.

Exam. Linn: Are there any further questions? I don't believe—

Mr. Smith (interrupting): May we have an answer to that question?

Exam. Linn: I believe it would be a waste. It has taken us a day and a half to get as far as we are.

Mr. Smith: In other words, you are objection to my question?

Exam. Linn: That is right.

Mr. Handler: Sustained.

Mr. Smith: Thank you. No further questions.

Exam. Linn: You are excused, sir.

[fol. 459] JOSEPH F. SINGERLE was sworn and testified as follows:

Direct examination.

By Mr. Frizzell:

Q. Will you state your name for the reporter, Mr. Singerle?

A. Joseph F. Singerle.

Q. What is your business address, sir?

A. 2700 Tweedy Boulevard, South Gate, California.

Q. By whom are you employed?

A. South Gate plant, Buick-Olds-Pontiac Assembly Plant Division, General Motors Corporation.

Q. How long have you been so employed?

A. At South Gate?

Q. Yes.

A. Since September 1, 1955.

Q. Prior to that time what was your job?

A. I started in the Linden Division at Linden, New Jersey, April 16, 1937, as a senior rate clerk. I was promoted to assistant traffic manager and then appointed traffic manager of the Framingham plant, Buick-Olds-Pontiac Assembly Division, January 1, 1946, and I held that position until my transfer to South Gate.

Mr. Frizzell: Mr. Examiner, did we mark these exhibits, 24 and 25?

Exam. Linn: We have not marked any exhibits since the last witness offered certain exhibits.

Mr. Frizzell: This will be No. 24.

Exam. Linn: A document of four sheets entitled, in part, "Distribution of Buick, Oldsmobile and Pontiac Vehicles" will be marked Exhibit 24, and the other one, a 12-page document entitled, in part, "Statement Showing Rail Carrier Service" will be marked Exhibit 25.

(Intervenor's Exhibit Nos. 24 and 25, Witness Singerle, were marked for identification.)

By Mr. Frizzell:

Q. You heard Mr. Barrett's testimony, Mr. Barrett who just preceded you?

A. Yes, sir.

Q. The Linden and Framingham plants indicated on Exhibit No. 23, are those the plants that you worked in before you came to South Gate?

A. Yes, sir.

Q. Mr. Singerle, do you have any production figures with you?

A. Yes, sir.

Q. What did you produce in 1956 at that plant?

A. We produced 132,551 units.

Q. How much of that production went into the state of California?

A. One hundred two thousand nine hundred one.

[fol. 461] Q. And the rest of it went to what states?

A. Arizona, Idaho, Montana, Nevada, Oregon, Utah and Washington.

Q. Of this 102,901 automobiles that went to California destinations, what was the distribution of that traffic as between rail carriers and motor carriers?

A. Sixty-five per cent was truck and thirty-five rail.

Q. When you talk about "truck", what company is it that delivers your production?

A. Pacific Motor Trucking Company.

Q. That is, the applicant here. Mr. Singerle, what is your normal trucking area out of your South Gate plant?

A. Well, we have shipped as far as Paso Robles, which is 240 miles from our plant, via truck.

Q. And do you ordinarily ship that far by truck?

A. Yes, sir.

Q. What is the distance from your South Gate plant to the Arizona border?

A. I would say around 200 miles.

Q. Mr. Singerle, directing your attention to Exhibit No. 24, would you tell us what that exhibit is?

A. This is an exhibit showing the towns in which our dealers are located.

Q. You mean that those are dealers at points involved in this application, is that right?

A. Yes, sir.

[fol. 462] Q. Did you prepare this exhibit?

A. Yes, sir, I did.

Q. Where did you get the population figures?

A. That came out of the Rand-McNally Road Atlas.

Q. And the figures shown at the righthand side of the exhibit, "Period Three Months", what does that mean?

A. That is the exact number of cars that went to each of these towns indicated.

Q. Mr. Singerle, directing your attention to Exhibit No. 25, will you tell us what that exhibit is?

A. It shows the rail service to the dealer towns, showing the destination carrier, the routes used, the number of carriers in order to get a car to that town.

Q. Did you prepare the information that is contained in this exhibit?

A. Yes, sir.

Q. The exhibit is self-explanatory, is it not?

A. Yes, sir.

Q. Directing your attention to the fact shown by the exhibit that 25 points indicated thereon are not served by a rail carrier, dealers located at points not served by a rail carrier are served in what manner?

A. Well, we ship them to the nearest rail point we can.

Q. And then how does the dealer get his car?

A. A dealer goes to that railhead and picks his cars up [fol. 463] and drives them to his place of business.

Q. Is it your intention to eliminate that driving from the railhead to the dealer's place of business?

A. Yes, sir.

Q. Could you pick out one or two points and tell us how far the dealer is from a railhead, just for illustration?

A. Well, Cottonwood, Arizona, we normally ship to Clarkdale, Arizona, which is two miles' distance.

Q. Two miles?

A. Yes, sir.

Chester, Montana, we ship in cars to Shelby, Montana, which is 34 miles distant.

Q. Directing your attention to Exhibit 25, the rail service exhibit, have you with you any illustrations of transit time required by rail carriers from South Gate to a particular point?

A. Yes, sir.

Q. Will you give us the results of your study?

A. Phoenix, Arizona, four days; Boise, Idaho, five; Helena, Montana, eight; Las Vegas, three days; Portland, Oregon, four days.

Q. Is it your business, as traffic manager there, to be informed about transit times?

A. Yes, sir.

Q. Do you or do you not periodically make a check of the transit time by rail carrier?

[fol. 464] A. Yes, we do.

Q. Give us an occasion when you may do that.

A. We make an extensive check at least once a year when we are sampling our dealers with the new models.

Q. Mr. Singerle, what is the fact with respect to split deliveries into the interstate destinations?

A. Well, for the first quarter of 1955 we split approximately 20 per cent, and in three months, June, July, August, in '56 it was approximately 24 per cent.

Q. If you trucked to these dealers at these interstate points, would you still have the problem of split deliveries?

Mr. Jacobson: No.

A. Yes, sir.

By Mr. Frizzell:

Q. Do you think you could handle the split delivery problem more expeditiously by truck than by rail?

A. Yes, sir.

Q. What is the daily production at your South Gate plant?

A. At the present time we are producing just about 750-units per day.

Mr. Bieneman: May I inquire, as a matter of information, is that one or two shifts?

Mr. Frizzell: Two shifts.

The Witness: Two shifts.

By Mr. Frizzell:

Q. Mr. Singerle, Exhibit No. 12 introduced by Mr. Booth, have you examined that exhibit?

[fol. 465] A. Yes, sir.

Q. Is that a correct portrayal of your plant area?

A. Yes, sir.

Q. And likewise Exhibits 13 and 14, which are aerial photographs, is that a correct portrayal of your plant area?

A. Yes, sir.

Q. Mr. Singerle, what is the storage capacity for new automobiles at your South Gate plant?

A. We have approximately 800 stalls assigned to the traffic department for new cars, okayed cars.

Q. That is roughly one day's production, is it not?

A. Yes, sir.

Q. Do you know what the storage capacity is of the Pacific Motor Trucking Company terminal?

A. They have about 430 to 450 spots in their yard.

Q. Then, it is important that you have a constant and even flow of your production through the storage yard and through the terminal of your carrier?

A. Yes, sir.

Q. Does PMT give you that type of service?

A. Yes, sir.

Q. Mr. Singerle, you have been in the hearing room all during the course of the hearing, have you?

A. Yes, sir.

Q. Have you not?

[fol. 466] A. Yes, sir.

Q. And you have heard testimony to the effect, by Mr. Booth, to the effect that Pacific Motor Trucking Company has not only a contract carrier operation whereby it delivers new automobiles, but that it also has a so-called

common carrier operation for the delivery of merchandise or dry freight, you have heard that testimony?

A. Yes, sir.

Q. Do you use the services of the common carrier phase of the Pacific Motor Trucking Company?

A. No, sir.

Mr. Bieneman: Mr. Frizzell, may I inquire, could we interpret that answer to mean it doesn't matter who routes it, they don't haul in or out of that plant?

The Witness: That is right.

By Mr. Frizzell:

Q. They don't come in or out of your plant?

A. That is right.

Mr. Frizzell: Does that satisfy you?

Mr. Bieneman: Yes. I was just wondering if the answer was restricted to traffic that he routed.

Mr. Frizzell: Mr. Examiner, I offer the two exhibits, 24 and 25.

Mr. Cronon: Would you please defer ruling until after the cross, Mr. Examiner?

Exam. Linn: Very well. The witness is available for [fol. 467] cross-examination.

Cross examination.

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[fol. 468]

By Mr. Burchell:

Q. As a matter of fact, there are a number of points shown on Exhibit 24 which are indicated as not being dealership points, aren't there?

A. That could be true.

Q. You mentioned that your normal area, or that the furthestest that you had trucked automobiles out of South Gate was to Paso Robles, about 240 miles?

A. I say, we have trucked automobiles that far, yes, sir.

Q. That was my question. Do you normally truck automobiles that far?

A. Yes, sir.

.

[fol. 469]

Cross examination.

By Mr. Handler:

Q. You have previously stated in your testimony that PMT does not deliver to or take products from your South Gate plant. Is that correct? Or did I misunderstand you?

A. No; I am misunderstanding you.

Q. Let me ask the direct question. Does Pacific Motor Trucking Company render any service to you other than the transportation of the automobiles outbound?

A. No, sir.

Q. Is that as a result of some policy you have established?

A. No, sir.

[fol. 470]

Recross examination.

By Mr. Jacobson:

Q. This exhibit shows the movement of cars for the first three months in 1955. How old is that population figure, what census was it taken from, what year?

A. We took a Rand-McNally Road Atlas for 1956.

Mr. Farrell: I have a question or two.

Recross examination.

By Mr. Farrell:

Q. Are you shipping cars by rail to destinations within the state of California where there is an interline movement, more than one railroad handling it, where PMT presently has authority and could serve it by highway under their existing certificates?

A. I couldn't say.

Q. Don't you ship to points on the Santa Fe in California by rail?

A. Offhand I couldn't tell you.

Mr. Farrell: That is all.

[fol. 471] Mr. Frizzell: I will again, Mr. Examiner, offer Exhibits 24 and 25.

Exam. Linn: They are received in evidence.

(Intervenor's Exhibits Nos. 24 and 25, respectively, Witness Singerle, were received in evidence.)

(Witness excused.)

Mr. Frizzell: We will call Mr. Cron.

GEORGE D. CRON was sworn and testified as follows:

Direct examination.

By Mr. Frizzell:

Q. Will you give your name to the reporter, please?

A. George D. Cron.

Q. What is your business address?

A. Sixty-ninth and Foothill Boulevard, Oakland, California.

Q. What is your occupation?

A. Traffic manager.

Q. Of what?

A. Of Chevrolet-Oakland Division of General Motors Corporation.

Q. How long have you been traffic manager of that plant?

A. I have been with the corporation, Chevrolet Division, for 34 years and I have been traffic manager since 1926.

Q. Has all of your service been at the Oakland plant?

A. It has.

Q. When did that plant first open?

[fol. 472] A. 1916.

Q. Mr. Cron, have you been in the hearing room throughout the proceeding?

A. I have.

Q. Did you hear the testimony of Mr. W. R. Lynch?

A. I have.

Q. Is Mr. Lynch the gentleman to whom you report in matters of traffic?

A. He is.

Q. You are the George Cron that he referred to in his testimony?

A. Correct.

Q. Mr. Cron, do you have any production figures for your plant?

A. I have.

Q. Will you give them to us, please?

A. I will give you 1955 figures, inasmuch as I can break them down, if necessary. We produced at Oakland 125,516 units in 1955.

Q. Do you have any figures for 1956?

A. We produced in 1956 129,632.

Q. Now tell us this: Are those units that were produced trucks and passenger cars?

A. Yes, sir.

Q. And in what percentages, can you tell us?

A. A quarter of the total figures that I gave are truck production.

[fol. 473] Q. Are they all Chevrolet automobiles or Chevrolet trucks?

A. They are.

Q. What part of that production, Mr. Cron, would be delivered in the state of California and what part of it would be delivered to the normal shipping area of your plant, meaning states other than California in the western part of the country?

A. I can give you the breakdown of the states other than California: Oregon, in 1955 we shipped 24,254 units. Washington, 24,920 units. Idaho, 4,671 units. Nevada, 1,509. And Utah, 1,546. The balance of the production was distributed in California.

Q. Directing your attention just to California, what is your distribution as between rail deliveries and truck deliveries?

A. I believe Mr. Lynch testified it was 46 per cent rail and 54 per cent truck.

Q. And now directing your attention to the deliveries in the other states that you mentioned, except the state of Nevada, how are your deliveries made to those states?

A. Rail.

Q. And to points in the state of Nevada, how are deliveries made in that state?

A. Truck.

Q. You have mentioned you have deliveries by truck out of your plant at Oakland. What truck line is it that serves you?

A. Pacific Motor Trucking.

[fol. 474] Q. Mr. Cron, will you refer to the exhibit marked No. 26.

(Intervenor's Exhibit No. 26, Witness Cron, was marked for identification.)

By Mr. Frizzell:

Q. Was that exhibit compiled by you?

A. It was.

Q. The list of points, could you tell us what those points represent?

A. Those points represent dealer locations where we ship automobiles direct to dealers.

Q. Would they represent any points to which deliveries are made to a dealer who is not at that point?

A. I would say not.

Q. The population figures shown on that exhibit were taken from what source?

A. From Rand-McNally Atlas and the Commercial Marketing Guide of 1956.

Q. And the column marked "1955" indicates what?

A. The units shipped to those points.

Q. And that would be both truck and passenger cars?

A. Correct.

Q. What is the column headed "Six Months Ended June 30, 1956"?

A. The units delivered for the first six months of 1956.

Q. And that would be passenger cars and trucks also?

A. Yes, sir.

Q. Mr. Cron, would it be a correct statement that the [fol. 475] ratio of passenger cars to trucks would be the same as you have already testified about?

A. It would. It usually averages about three passenger cars to one truck.

Q. Directing your attention, Mr. Cron, to Exhibit No. 27—

(Intervenor's Exhibit No. 27, Witness Cron, was marked for identification.)

By Mr. Frizzell:

Q. (continuing) —is the information contained in Exhibit No. 27 compiled by you?

A. Yes, sir. The information put in this statement, or exhibit, was furnished by me and furnished to you to put in exhibit form.

Q. Mr. Cron, you indicate in that exhibit that a number of dealer points are not served by a rail carrier. Could you give us an illustration of a point that is not served by a rail carrier, and how a dealer would get his motor vehicles there?

A. In the points which we ship to out of Oakland, our Oakland area shipping, we have 49 points which are off-line points. The worst one we have is a town by the name of Gold Beach, Oregon, which must be shipped to Coquille, Oregon, and the distance—for the reason that Gold Beach has no railhead, and the distance between Coquille and Gold Beach is 77 miles.

We have other points, such as Point DeLake, Oregon, where we ship to Toledo 36 miles away.

And Mitchell, Oregon, where we ship to Prineville, a distance of 48 miles away.

[fol. 476] Q. Does the dealer take delivery at the railhead?

A. At the railhead.

Q. Mr. Cron, did you make any study of transit time and did you pick out some representative points in connection with that study?

A. Yes. Our transit time, which we check at the first of each model year to dealers, we make a thorough check of transit time to rail transportation points and a check is made against each shipment as it's forwarded from our plant to see that it arrives on the date prior to the dealer showing. These show anywheres, like Seattle, for instance, third to fourth morning delivery, Spokane will average

fourth morning, sometimes fifth morning, Boise, Idaho, will average, will figure, four, five and sometimes, due to terminal delays between the Southern Pacific and the Union Pacific, it may run six. Those are rare occasions.

Q. How long has Pacific Motor Trucking Company been serving your plant?

A. Since 1935.

Q. Has the service been satisfactory to you?

A. Very satisfactory.

Q. What railroad supplies you with boxcars for the transportation of your new automobiles?

A. Southern Pacific Company.

Q. Could you tell us, of the cars furnished by them, who [fol. 477] owns the cars?

A. Southern Pacific Company.

Q. Have you ever experienced any car shortages at your plant?

A. Yes, we have.

Q. Could you tell us about one of those car shortages?

A. Well, we had a car shortage the first part of 1955. It became quite serious, it was necessary to change our production schedules, diverting the production to local delivery cars via PMT truck service rather than rail points, in order to alleviate car shortages. We also at that time, and I do not have a record of it here, but we moved some three hundred cars by water up to the Pacific Northwest, Portland and Seattle.

Mr. Cronon: Through no fault of the witness, I didn't hear that answer. May we have it read, please?

(Last question and answer read.)

By Mr. Frizzell:

Q. What is the fact in connection with water transportation, in point of time?

A. It's longer.

Q. Mr. Cron, Mr. Booth, in his testimony, introduced into the record his Exhibit No. 4, which purports to be an outline of your plant facilities at Oakland, your Plant No. 1. Is that a correct portrayal of your plant?

A. That is correct.

Q. Mr. Cron, what is your daily production at your Plant No. 1?

A. Four hundred seventy-seven units.

[fol. 478] Q. What is your storage capacity?

A. Four hundred eighty.

Q. What is the storage capacity of the PMT terminal at your plant?

A. I believe it's around 375 units.

Q. Is it important that you have a constant flow of motor vehicles out of your plant and out of the carrier's terminal every day?

A. It is.

Q. Mr. Cron, do you use Pacific Motor Trucking Company exclusively for your automobile and truck deliveries?

A. Yes, sir.

Q. I am talking to you now about Chevrolet.

A. That is correct.

Q. Is there ever an occasion when you would release any automobiles or trucks to a transportation company, a motor transportation company, other than Pacific Motor Trucking Company?

A. May I have that question clarified to the extent, do you mean Chevrolet trucks and Chevrolet passenger cars on which we pay the freight?

Q. Let me start all over again, Mr. Cron. You testified that you used PMT exclusively for the delivery of Chevrolet traffic.

A. That is right.

Q. Now I am asking you, is there ever an occasion when you would release automobiles or trucks to any other carrier besides Pacific Motor Trucking Company?

A. Yes.

Q. Tell us what those occasions would be.

A. Those occasions are caused by government production, where the government issues the bills of lading instructing the carrier to whom they should be delivered.

Q. Do you have anything to do with that traffic?

A. No, I do not.

Q. Who pays the freight?

A. The government.

Q. Referring to Mr. Booth's Exhibit No. 4, what is the volume of that traffic, Mr. Cron?

A. For the first, from the 1st of January 1957—that is the only records I could get, inasmuch as we do not have a copy of the government bill of lading to check them out—we had 207 units moved by the Insured Transporters, Inc., and by Kenosha, to date, 26 units.

Mr. Smith: You mean, by "Kenosha", Kenosha Auto Transport Corporation?

The Witness: I guess that is the name.

Mr. Vaughan: What was that figure for Insured Transporters?

The Witness: Two hundred seven.

By Mr. Frizzell:

Q. And did you give the figure for KAT?

A. Twenty-six.

Q. Will you refer to Exhibit No. 4, Mr. Cron, and point [fol. 480] out on that the location at which these automobiles or trucks were released to these other motor carriers?

A. Looking, taking it with the tracks, the whole yard, at the bottom, towards the top where you see the administration building, you will note before you come to the administration building there is a gate, and right in between that gate and a guardhouse, where it says "Guard", is a little triangular square which we use normally for cars that we have for repair, but we handle the Army jobs through that congested area and they are delivered out of that point.

Q. Mr. Cron, Mr. Booth also put in Exhibits 5 and 6, being aerial photographs. Do you recognize those photographs?

A. I do.

Q. What do they portray?

A. They portray our Plant No. 1.

Q. Mr. Cron, do you ship any cars from your Plant No. 1 to interstate or foreign destinations through the local ports?

A. Yes, we do.

Q. Is that a regular operation?

A. Yes, it is.

Q. And who handles it?

A. PMT.

Q. Do you have occasion, Mr. Cron, to ship parts and accessories, automobile parts and accessories?

A. Yes, I do.

[fol. 481] Q. Where would such shipments go to?

A. They would go to dealers within the state of California and interstate.

Q. Do you have established routings for the handling of that type of traffic?

A. I have.

Q. Will you tell us whether or not the Pacific Motor Trucking Company, a common carrier by motor vehicle, is included in any of your routings?

A. They are included to a few points in California only. No interstate traffic is given to PMT.

Q. Well, they are included on a few intrastate points to California. Could you give us any idea about the volume of products that they handle?

A. Yes. In 1955 the total revenue was some 8 thousand and some odd dollars, and the reason for that is, and why it was so high, was that we used PMT on holidays when other truck lines, common carriers, will not come into our plant due to the overtime basis, and PMT has agreed to come in and pick up the freight for those other truck lines. That is the time we used them.

Mr. Jacobson: Could I have that read, please?

(Last question and answer read.)

Mr. Frizzell: I offer Exhibits, Mr. Examiner, 26 and 27.

Exam. Linn: The documents referred to in the testimony, Exhibits 26 and 27, are received in evidence.

[fol. 482] (Intervenor's Exhibits Nos. 26 and 27, respectively, Witness Cron, were received in evidence.)

Mr. Bieneman: Mr. Examiner, might this be an appropriate time for a recess?

Exam. Linn: We will be at ease briefly.

(Short recess.)

Exam. Linn: The hearing will be in order.

Cross examination.

By Mr. Cronon:

Q. Referring to your Exhibit 26—

Mr. Frizzell: Mr. Examiner, I had one other question I wanted to cover.

Exam. Linn: Go ahead.

Further direct examination.

By Mr. Frizzell:

Q. Mr. Cron, I overlooked, and I think it should come out on direct examination, what is the extent of your deliveries by PMT in northern California?

A. We use PMT from the Coast to the entire northern part of California, to the northern border of California, to the east.

Q. And how far south do you go?

A. As far as Fresno and a little bit below Fresno.

Q. How far is that, in distance?

A. I would say, up to the Oregon border it must be some 225 miles. I am not sure. I am just guessing at it.

Q. Fresno?

A. Fresno is about 190 miles.

[fol. 483] Q. How far is it to the Nevada border?

A. The Nevada border is about 147 or 150 miles.

Mr. Frizzell: Thank you.

Mr. Myers: Before the cross-examination starts, may I speak for a moment, Mr. Examiner?

Exam. Linn: Does it relate to this particular case in hearing or to your own case?

Mr. Myers: To our own case. Since all the parties here are parties, since all the parties in Cassen's case are parties to this case—

Mr. Frizzell: That is not so, Mr. Examiner. I am not a party to the Cassen's case.

Mr. Myers: I said all the parties in the Cassen's case are present—

Exam. Linn: Do you want to make a record in your own case or in this case?

Mr. Myers: I just simply want to make an announcement at this time, if I may. We have heard most of the applicant's case so far on direct and we have elected not to proceed with our application in the Cassen's case. I just want the parties to know that. If any further application is necessary, we will take care of that. We are asking leave to withdraw our application in the Cassen's case.

Exam. Linn: Off the record.

(Discussion off the record.)

[fol. 484] Exam. Linn: On the record.

Cross examination (continuing).

By Mr. Cronon:

Q. Mr. Cron, referring to your Exhibit 26, I asked Mr. Singerle on a similar exhibit whether or not he made any personal survey of these towns and he indicated he did not. Is that true in your case?

A. No.

Q. That is true, isn't it?

A. It's true, I made a survey of this.

Q. Oh, you did?

A. I made up this report. This is taken right from our actual records, shipping records.

Q. But as to the towns, whether or not they are postal stations or located on star routes or how many business places are there, you made no personal survey of each town?

A. No, I didn't personally go to those towns, no.

Q. I notice that your Exhibit 27, starting with page 6—well, it is page 6 only—that covers what you call rail service to Nevada points, seven points not served by rail, is that correct?

A. That is correct.

Q. And the balance are served by rail, but your Exhibit 26 indicates no shipments into Nevada?

A. Because the only one, only one point, I think, Ely, Nevada, is the only point which we do not truck to, as far as our shipping area is concerned. You see, Ely, Nevada, [fol. 485] is out of our area, of the Oakland plant. And we already have rights to the Nevada points, we are trucking to those points.

Q. When you say "we already have rights", is that—

A. Well, PMT, I should say, PMT has rights to there, and our territory goes as far as Elko, Nevada.

Q. What I am curious about, maybe I don't understand this, if you have rail and PMT service into Nevada, the reason for your not having shipped any cars into that state outside of Ely, you do have service into other points in Nevada, do you not?

A. Well, we have truck service, yes.

Q. But do I understand that all deliveries into Nevada are made from a distribution point other than Oakland?

A. Some of them.

Q. Some shipments are made into Nevada from your Oakland plant?

A. Yes.

Q. But in the period covered by your exhibit, Ely is the only point to which shipments are made, is that correct?

A. By rail.

Q. By rail?

A. Yes.

Q. You don't show anything by truck, then—

A. (Interrupting) As far as Oakland. Now, Ely primarily is a Van Nuys point. We have shipped some shipments into Ely, Nevada.

Q. Well, this Exhibit 26, is that designed to cover only rail shipments?

[fol. 486] A. Rail shipments.

Q. I see.

Mr. Bieneman: Could we make that formal change in the exhibit, to insert after the word "Vehicles" "By Rail"?

Exam. Linn: We will read the exhibit in conjunction with the testimony.

Mr. Cronon: May I ask Mr. Frizzell a question?

Exam. Linn: Yes.

Mr. Cronon: Is the same explanation true with respect to Exhibit 24? Those are rail shipments only?

Mr. Frizzell: Yes, sir, they are all rail shipments.

Mr. Cronon: I have no further questions.

Cross examination.

By Mr. Burchell:

Q. The only dealerships under the Oakland plant in Idaho are the points shown on Exhibit 26?

A. That is correct.

Q. Other dealerships in Idaho are served from Kansas City or Van Nuys?

A. That is right.

Q. If this application is granted, will there be any more business move from the Oakland plant to Idaho dealerships than there is at present?

A. I think Mr. Lynch answered that question. In fact, that is one of policy that will have to emanate from Mr. Lynch in Detroit.

[fol. 487] Q. You don't know?

A. I don't know.

Mr. Burchell: That is all.

Cross examination.

By Mr. Farrell:

Q. On your Exhibit 27 you show 11 points in Washington as not being served by rail.

A. Yes, sir.

Q. Have the dealers at any one of those points requested that you ship your automobiles by highway to them?

A. I have had requests received through our sales division—

Q. From how many of those 11 points?

A. I wouldn't know.

Q. And you are shipping automobiles within California on two-line rail movement at the present time, are you?

A. No, sir.

Q. You stated that approximately 46 per cent of your production within California is being shipped by rail?

A. I didn't say that. I said 46 per cent of our production was shipped by rail and 54 per cent by truck, the truck part being Nevada and California, the rail would be out of state.

Q. You are trucking all of your production—

A. In other words, there is no rail in California.

Mr. Farrell: Thank you.

Cross examination.

By Mr. Andersen:

Q. Your Exhibit No. 26, is that a complete record of rail [fol. 488] shipments from Oakland to the points you mention during the last half of 1956?

A. That is the number of units shipped to those dealers.

Q. Wouldn't this exhibit purport to include a record of any shipments made to a military establishment?

A. No.

Q. In regard to your Exhibit No. 27, have you had any complaint from any of the places mentioned in Utah of inadequate service?

A. Utah is out of our shipping area and out of our Pacific Coast region and we would not receive complaints from there.

Q. Although you do make shipments into the state?

A. Very few.

[fol. 489] Cross examination.

By Mr. Handler:

Q. It does not. Now, I understood you to say that Insured Transporters moved some vehicles on government bills of lading.

A. They have.

Q. Those vehicles would be additional to anything shown on Exhibit 26?

A. Yes, sir.

Q. Did Insured Transporters transport any vehicles from your Oakland plant that were not moving on government bills of lading?

A. What have you reference to?

Q. Anything. Any automobile or truck moving from the Oakland plant.

A. They have moved GMC trucks.

Q. And do they do that regularly?

A. They do.

Q. And is that out of the same plant?

A. No, that is out of our truck plant.

Q. And that truck plant is the No. 2 plant?

A. Correct.

Q. Also in Oakland?

A. That is right.

Q. Now, then, you are not supporting this application [fol. 490] for any authority out of that plant, are you, the GMC plant?

A. No.

Q. You are requesting the Commission here, then, your support is only for movements out of Plant No. 1?

A. That is correct.

Q. As to the traffic which Insured transported on government bills of lading, did that move out of Plant No. 1?

A. Some of it out of Plant 1 and some of it out of Plant 2.

[fol. 491] Mr. Frizzell: Mr. Lilinthall, please.

T. R. LILINTHALL was sworn and testified as follows:

Direct examination.

By Mr. Frizzell:

Q. Will you state your name to the reporter?

A. T. R. Lilinthall.

Q. Your address, your business address?

A. 8000 Van Nuys Boulevard, Van Nuys, California.

Q. By whom are you employed?

[fol. 492] A. Chevrolet-Los Angeles Division, General Motors Corporation.

Q. How long have you been employed?

A. I have been with the company 34 years, 10 years with Chevrolet-Los Angeles, six years with Chevrolet-Buffalo as traffic manager, six years at Bloomfield, New Jersey, as traffic manager, assistant traffic manager at Tarrytown prior to that.

Q. Are you the first traffic manager at the Raymer plant?

A. Yes, sir.

Q. You came there when the plant opened, is that right?

A. I came there when it was under construction. It opened in 1948, with the 1948 model.

Q. Mr. Lilinthall, are you the Lilinthall that Mr. Lynch referred to in his testimony?

A. Yes, I am.

Q. You have heard Mr. Lynch's testimony?

A. Yes.

Q. Is Mr. Lynch the gentleman that you report to?

A. Yes, sir.

Q. Mr. Lilinthall, I show you what has been marked Exhibit No. 28 and ask if that is a statement of shipments from your Raymer plant to the points indicated therein.

A. Yes, it is.

Q. The points that are named in this exhibit, are they dealer points?

[fol. 493] A. Dealer points.

Q. And the population figures, where did you get that?

A. Rand-McNally maps, atlas.

Q. And the last two columns on the far right are actual shipments?

A. That is right.

Q. I mean actual automobile shipments?

A. Actual automobile shipments.

Q. You understand that Exhibit 28 lists only points that are involved in this application, do you not?

A. That is right.

Q. Directing your attention to Exhibit No. 29, Mr. Lilin-

thall, was that exhibit prepared under your direction and supervision?

A. Yes, it was.

Q. And the exhibit is self-explanatory, is it not?

A. That is right.

Q. Directing your attention to the recapitulation in which there is indicated 49 points, dealer points, not served by a rail carrier, did you, for the purpose of this hearing, select any of those point for discussion as to how the dealer at that point gets his automobiles?

A. Yes.

Q. Will you give us the benefit of that?

A. We ship a load to Casa Grande, Arizona, with the unit to the dealer at Coolidge, which is 25 miles from Casa [fol. 494] Grande. That dealer has to come from Coolidge to Casa Grande, unload his car, and drive back to his dealership.

Q. Do you have any other point?

A. Yes, we have. We have, at Soda Springs, Idaho, we put a car, two cars, in there for Grace, Idaho, which is 11 miles from Soda Springs, and the dealer there has to do the same thing, travel 11 miles, unload his car and drive back with his unit.

Q. Is that illustrative of the other points that are not served by rail carrier?

A. That is right.

Mr. Frizzell: Are you getting it?

Mr. Burchell: I am hearing it, but I don't understand it.

Mr. Frizzell: Would you tell me whether you don't understand my questions or you don't understand the answers?

Mr. Burchell: He was testifying with respect to a shipment to Grace, Idaho, and you were referring to it as not being covered by railroad. Is that the tenor of his testimony?

The Witness: These are split shipments. — Wait a minute. I got off the track here. We were talking about railheads.

By Mr. Frizzell:

Q. Points not at or being served by railroad, where the dealer gets it at a railhead.

A. We will take St. George, Utah, on which delivery is made at Cedar City, which is 60 miles from St. George. So again, as I said before, the dealer has to drive from Cedar City, unload his units and drive back to his dealership, which is at St. George.

[fol. 495] Also St. Johns, Arizona, takes delivery at Holbrook, which is 60 miles away from St. Johns.

Mr. Frizzell: Is that clear now?

Mr. Burchell: Yes, sir. You did not mean to leave any inference that Grace, Idaho, or Coolidge, Arizona, were not served by railroad, is that correct?

The Witness: No, that is right. Those are mixed loads.

Mr. Burchell: Very well.

By Mr. Frizzell:

Q. Do you have some illustrations from this Exhibit No. 29 in respect to transit time, Mr. Lilinthall?

A. Yes, I do.

Q. Give us those, please.

A. Salt Lake City, Utah, is four to five days rail; Las Vegas three to four days; Flagstaff, Arizona, is four, sometimes four to six days.

Q. Do you have occasion to check the transit time of the railroads?

A. Yes, we do.

Q. Did you hear Mr. Cron's testimony on that point?

A. Yes, I did.

Q. Would yours be the same?

A. The same.

Q. Do you have any production figures with you, Mr. Lilinthall?

A. I do.

[fol. 496] Q. Do you have any production figures for 1956?

A. The first six months of 1956.

Q. What was that?

A. Seventy-one thousand eight hundred seventy-six. That is both passenger and commercial vehicles.

Q. And as to passenger cars and commercial motor vehicles, what is the ratio one to the other?

A. Between passengers and—?

Q. Yes.

A. About, well, I would say it's about seventy-five and twenty-five.

Q. Seventy-five what?

A. Passenger cars, and 25 per cent commercial motor vehicles.

Q. When you ship your motor vehicles, do you ship them on that same ratio?

A. Commercial vehicles?

Q. When you make shipments of your motor vehicles that you produce, do you ship them in just about the same ratio, that is, one truck to three passenger cars?

A. Yes, that is right.

Q. Directing your attention to the year 1955, do you have production figures for that year?

A. Yes; we produced 122,649 units in 1955.

Q. And the ratio as to that, between trucks and passenger cars, would be about the same?

[fol. 497] A. Would be about the same.

Q. Of the production at your plant, about how much of it is for California points?

A. About 23 per cent, or I should say 77 per cent.

Q. And the rest of it goes where?

A. Twenty-three percent rail.

Q. Just a minute, now. Seventy-seven per cent goes to California points?

A. That is right.

Q. And the rest of it goes to interstate points?

A. That is right.

Q. So all of your California deliveries, then, are by motor carrier, is that right?

A. That is right.

Q. And the 23 per cent which goes by rail goes to what states?

A. It goes to Arizona, Nevada, Utah.

Q. Do you ever have occasion to ship to other states besides those three that you named?

A. Idaho is included in there. I didn't say Idaho. Arizona, Nevada, Utah and Idaho. Idaho is included.

Q. Mr. Lilinthal, what motor carrier do you use for the delivery of your outbound shipments?

A. Pacific Motor Trucking Company.

Q. How long have you used that motor carrier?

A. Ever since the plant has been in operation.

[fol. 498] Q. Has its service been satisfactory or not?

A. Yes, it has.

Q. About how far, Mr. Lilinthal, is your trucking area from your plant?

A. About 240 miles.

Q. How far is your plant from the Arizona boundary?

A. About 200 miles.

Q. Mr. Lilinthal, of your deliveries to these out-of-state points, could you tell us what percentage are split deliveries, so to speak?

A. About 46 per cent.

Q. And they are all rail?

A. That is right.

Q. And would that percentage be maintained if you were delivering by truck?

A. Yes, it could.

Q. But would motor carrier deliveries be more efficient and expeditious in handling split deliveries?

A. Oh, yes. It would put the shipment right in the dealer's hands and the dealer wouldn't have to do any traveling to pick up his units.

Q. Do you know that Pacific Motor Trucking Company has a common carrier operation, or do you?

A. Yes, I do.

Q. Do you ever use the common carrier operation of Pacific Motor Trucking Company?

[fol. 499] A. No, not in interstate.

Q. Interstate?

A. Not in interstate; intrastate.

Q. How about intrastate?

A. Intrastate, we do use them to a certain extent.

Q. Regularly?

A. Yes, regularly.

Q. How much revenue do you pay them?

A. That I don't know. I don't have that figure.

Mr. Frizzell: That is all.

OFFERS IN EVIDENCE

I offer Exhibits 28 and 29, Mr. Examiner.

Exam. Linn: They are received in evidence.

(Intervenor's Exhibits Nos. 28 and 29, respectively, Witness Lilinthal, were received in evidence.)

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[fol. 500] OLIVER E. ETZEL was sworn and testified as follows:

• Direct examination.

By Mr. Meinhold:

Q. Will you please state your name and business address?

A. My name is Oliver E. Etzel, my business address is 110 Market Street, San Francisco, California.

Q. What is your occupation?

A. I am employed by Pacific Motor Trucking Company as executive assistant in the office of its vice-president.

Q. How long have you been employed by Pacific Motor Truck Company?

A. I have been employed by Pacific Motor Trucking Company since it was incorporated in 1933.

Q. Are you familiar with the common carrier and contract carrier operating rights of Pacific Motor Trucking Company?

A. Yes, I am.

Q. Does Pacific Motor Trucking Company hold certificate right of public convenience and necessity issued by the Interstate Commerce Commission?

[fol. 501] A. Yes, it does.

Q. And it also holds permits issued by the Interstate Commerce Commission?

A. Yes, it does.

Q. Have you prepared an exhibit setting forth the common carrier certificates of Pacific Motor Trucking Company?

A. Yes, I have prepared such an exhibit, which is entitled "Complete Authority Heretofore Issued to Pacific Motor Trucking Company by the Interstate Commerce Commission Authorizing Transportation of Property as a Common Carrier by Motor Vehicle".

Exam. Linn: The document will be marked Exhibit 30. (Applicant's Exhibit No. 30, Witness Etzel, was marked for identification.)

By Mr. Mainhold:

Q. Is Pacific Motor Trucking Company presently conducting operations pursuant to the operating authority described in Exhibit No. 30?

A. Yes, it is.

Q. Are you familiar with the application that is pending before the Commission in this proceeding?

A. I am.

Q. Will a contract carrier operation, as proposed in the application, duplicate in any manner as to territory or commodities the operating authority set forth in your Exhibit No. 30?

A. The proposed contract carrier operations do not duplicate any of the authorities, authorized common carrier [fol. 502] operations as between points of service, except to certain territory in western Oregon. A combination of items 1, 2, 5, 5-A, 7, 10, 12 and 13 of Pacific Motor Trucking Company's certificate of public convenience and necessity, Docket No. MC-78786, dated July 27, 1956, would permit Pacific Motor Trucking Company to transport, as a highway common carrier, automobiles between points in the San Francisco Bay area, including Oakland, to points on authorized routes in western Oregon. To the extent that service is authorized to off-rail locations in Oregon, there is a duplication of offer of service as a common and contract carrier.

Q. What points specifically would be involved in such duplication?

A. What I have in mind is this: The present authority authorizes service to all points on the authorized routes

which are stations on the rail lines of Southern Pacific Company, including points on the authorized routes that are not more than 10 miles by highway from such a rail station on an authorized route, and to the extent that service to these highway points is authorized in the common carrier certificate, a duplication would exist in the event the contract carrier authority sought is granted to serve all points in Oregon which are not stations on the lines of Southern Pacific Company.

Q. Can you tell us what point or points would be so involved in the duplication of service?

[fol. 503] A. Yes. Of Oregon points to which Chevrolet Division, General Motors Corporation, ships cars, there is only one point at which a duplication of service would result. That point is Toledo, Oregon.

Q. Do you know what the population of Toledo is?

A. (No response.)

Q. If you don't have it—

A. No, I don't apparently. I apparently don't have it with me.

Q. I will withdraw the question, to save time.

With respect to service from the California origins to points in the other states involved in the pending application, will there be any duplication of service as between common carrier and contract carrier operations?

A. No, there will be none.

Exam. Linn: You are speaking of duplication of service or duplication of operating rights?

Mr. Meinhold: Duplication of operating rights.

Exam. Linn: Is that the sense in which you are answering the questions?

The Witness: Would you read Mr. Meinhold's question back to me again, please?

(Last question and answer read.)

The Witness: That is right.

By Mr. Meinhold:

Q. I believe you stated that the point involved in Oregon was Toledo. Isn't it a fact that the point would be Newport?

[fol. 504] A. That is right.

Q. Newport, Oregon?

A. Newport, Oregon, being a point approximately four miles west of Toledo, four to six miles.

Q. Referring to common carrier operating rights, you are referring to those rights under which Pacific Motor Trucking Company may provide service to the public, are you not?

A. Yes.

Q. When was the operating right between the San Francisco Bay area and Portland acquired by Pacific Motor Trucking Company?

A. July the 1st, 1940.

Q. Are there any restrictions in the commodity authorization in that operating right?

A. Yes.

Q. Where are they?

Mr. Handler: Pardon me, Mr. Meinhold. Can you refer us in Exhibit 30 to the certificate that embraces that authority?

Mr. Meinhold: Will you do that, Mr. Etzel?

The Witness: As I already testified, that authority is contained in Certificate 78786, dated July 27, 1956, and is a document consisting of 54 sheets attached immediately under the title page. The items of the certificate which we are discussing are items 1, 2, 5, 5-A, 7, 10, 12 and 13.

[fol. 505] By Mr. Meinhold:

Q. I believe you were about to state the commodity restrictions in the present operating right, were you not?

A. These operating rights—

Exam. Linn: I wonder if we can't just read the exhibit. If someone attempts to construe that document with other than a very short pencil, we are liable to just misconstrue the transcript.

By Mr. Meinhold:

Q. Perhaps if I could ask one leading question of you. Mr. Etzel: Does not that commodity authority contain a

restriction prohibiting the transportation of commodities requiring special equipment?

A. It does.

Q. Have you requested from the Interstate Commerce Commission an informal opinion as to whether automobiles may be transported from Oakland to Oregon points, in view of that restriction?

A. Yes, we have. Such an informal request has been made on the Interstate Commerce Commission for determination of the question and we were advised by the Director of the Bureau of Motor Carriers that it—

Mr. Handler (interrupting): I object to that on the ground it's hearsay. If there is any written advice, I suggest it be submitted in evidence as the best evidence.

By Mr. Meinhold:

Q. Do you have the document containing the advice with you?

[fol:506] A. I will see. I do.

Q. Have you found the advice from the Commission?

A. Yes.

Q. In what form is that advice?

A. It's in the form of a Western Union telegram addressed to Pacific Motor Trucking Company.

Mr. Johnson: It's short.

Mr. Meinhold: Would you like to look at it?

Mr. Handler: Yes. Thank you.

By Mr. Meinhold:

Q. What is the date of the telegram?

A. March 14, 1955.

Q. By whom is it signed?

A. It is signed "W. J. Blanning, Director".

Q. And to whom is it addressed?

A. To S. E. Hyde, Pacific Motor Trucking Company.

Q. And will you read the telegram, please?

A. "Rephone. It is informal opinion of Commission, Division 5, that carrier is not authorized in Certificate MC-78786 to use special automobile equipment for transporta-

tion of automobiles. Refer O. Signed: W. Y. Blanning, Director."

Q. In the event the Commission should not agree with the informal opinion of Mr. Blanning, is Pacific Motor Truck Company willing that its common carrier authority from the San Francisco Bay region to Oregon points may be modified in any manner so as to prevent the transportation of new automobiles in initial movements from Oakland to [fol. 507] points in Oregon authorized to be served by this operating right?

A. Yes. Pacific Motor Trucking Company is agreeable to accepting a further condition in its operating rights between ~~Oakland~~ and Oregon points to exclude therefrom the right to transport assembled automobiles, trucks and buses.

Q. Have you been authorized to make that statement, Mr. Etzel, by your superior officers?

A. I have been, by the Vice-President of Pacific Motor Trucking Company.

Q. Are there any operating rights contained in Exhibit No. 30 which authorize transportation of commodities as a common carrier from either South Gate or Raynier to points in Oregon?

A. No, there are none.

Mr. Bieneman: May I inquire of counsel, would there be anything in such authority to prohibit the applicant as a common motor carrier from accepting traffic from, originating at, those points and delivered to those points by other carriers and delivered to applicant as a connecting carrier?

Mr. Johnson: No. --Will you restate your question?

Mr. Bieneman: I understood the last statement of the witness to be that you had no authority as a common carrier by motor vehicle out of South Gate, for example.

Mr. Meinhold: That is correct.

Mr. Bieneman: I am asking whether there is anything [fol. 508] in the existing certificates as a common motor carrier that would prohibit the applicant from accepting traffic originating at South Gate via another carrier and then delivered to the applicant as a secondary carrier in a two-line service.

By Mr. Meinhold:

Q. Will you answer the question, Mr. Etzel?

A. Pacific Motor Trucking Company has no interstate operating rights out of South Gate or Los Angeles to any of the points involved in this application which would permit it to accept under joint rates or under direct shipment by another line, another truck line, any traffic to those points.

The Witness: Maybe I didn't understand what you were getting at there.

Mr. Bieneman: I will reserve it for cross-examination. I don't think you did.

The Witness: Possibly.

By Mr. Meinhold:

Q. Have you made any investigation to determine whether there are other carriers holding either certificates or permits to transport automobiles in initial movements from the origins involved in this application to any other of the destinations involved in this application?

A. Yes, I have.

Q. And have you prepared an exhibit giving that information?

A. Yes, I have prepared such an exhibit, consisting of eight sheets.

Exam. Linn: The document will be marked Exhibit 31.

[fol. 509] Mr. Jacobson: For identification? I might want to make an objection. May it be for identification at this point? I might want to make an objection.

Exam. Linn: It is for identification at this point.

(Applicant's Exhibit No. 31, Witness Etzel, was marked for identification.)

By Mr. Meinhold:

Q. Do you have copies of the underlying certificates and permits referred to in this exhibit?

A. Yes, I believe they are in the room here.

Q. Do you consider this exhibit to be self-explanatory?

A. I do.

Q. Mr. Etzel, if the Commission should see fit, as a condition to the approval of the pending application, the imposition of restrictions on the common carrier operating authority of Pacific Motor Trucking Company which would prevent the transportation of new automobiles in initial movements between the points involved, would such a condition be acceptable to Pacific Motor Trucking Company?

A. Yes, it would.

Mr. Handler: May I ask, for clarification, Mr. Meinhold, did you include new trucks and buses in that designation of "automobiles"?

Mr. Meinhold: Yes.

Mr. Handler: In other words, the same terms as used in the Commission's commodities description case, automobiles, trucks and buses?

By Mr. Meinhold:

Q. If I asked you the same question and eliminated the word "new" from my question, would you give the same answer?

A. I would. And I would give the same answer I previously did about 10 minutes ago, that we would be agreeable to accepting such a restriction in our common carrier certificated rights between Oakland and points in Oregon where a duplication exists.

Mr. Meinhold: That is all on direct.

Mr. Cronon: I have no questions.

Mr. Burchell: No questions.

Mr. Farrell: No questions.

Cross examination.

By Mr. Jacobson:

Q. In connection with your Exhibit 31, Mr. Etzel, where did you get the information, or what information was available to you with respect to the authorities of Hadley Auto Transport, Robertson Truck-A-Ways, Dallas-Mavis and B & H?

A. We had made a review from our company records of all of the decisions of which we had a record that were granted to those carriers, and we excluded from this review such decisions as involved territory not pertinent to the issues in this case.

Q. Did you have a complete list of all the subs?

A. A complete list of all the subs, and we excluded everything except what appears on this exhibit.

[fol. 511] Mr. Meinhold: We will call Mr. Robinson.

R. J. ROBINSON was sworn and testified as follows:

Direct examination.

By Mr. Meinhold:

Q. Will you please state your name and address for the record?

A. R. J. Robinson, 96 Redwood Way, Atherton, California.

Q. What is your occupation?

A. I am employed by the Southern Pacific Company as a special representative in the Executive Department in the Bureau of Transportation Research.

Q. What are the functions of the Bureau of Transportation Research?

A. The functions of the Bureau of Transportation Research [fol. 512] search are the preparation of studies involving transportation matters and also the preparation and submission of data to be used before the regulatory bodies. And I am involved in that sort of work.

Q. Have you made any study to determine the transit time for the movement of automobiles by rail from South Gate and Raymer, California, to destinations on the Southern Pacific Company in the states of Oregon, Arizona, Nevada and New Mexico?

A. Yes.

Q. Will you please describe how you conducted this study and your sources of information?

A. The study is based, as indicated on the title sheet, January 14 to January 25, inclusive. You might notice that on the title sheet Oakland, California, has been scratched out. The reason for that was that inadvertently there was a station shown in the exhibit which did not belong in there, and it was the only shipment originating from Oakland, so I eliminated it.

As to the preparation of this exhibit, the underlying documents as the basis for the exhibit were copies of the waybill, which was to secure the date of shipment, the destination and the routing of the carload shipment. The other exhibit used—

Q. (Interrupting) Just a minute. Were those copies of the waybills the copies that were struck off at the time the original waybill was struck off?

A. That is correct. That is the usual procedure on the [fol. 513] railroads.

Q. Very well.

A. The other document used for the information shown on the exhibit under the subtitles of "Arrival Destination", "Delivery Destination" was the demurrage record, which is made at all freight stations on Southern Pacific lines and kept in the regular course of business, and it does show this information among other items that are necessary in the bookkeeping between the railroad and the shippers of carload freight.

Q. Do you have present in the hearing room those copies of waybills and the demurrage sheets?

A. Yes. All of them are here that were used in this exhibit, over on the window ledge.

Now, as—

Q. (Interrupting) Pardon me.—Did you wish to add something?

A. Yes. Under the subtitle of the first page, where it says "Rail Transit Time (Days)", I compiled that by the simple subtraction between the date of shipment and the delivery at destination, to arrive at the days of time in rail transit.

Q. How was the information obtained showing the truck-away transit time, or which shows the truckaway transit time?

A. That was obtained by me from you. You handed me a document that indicated those points and I abstracted them and placed them on this exhibit.

Q. That document is Mr. Booth's Exhibit No. 8?

[fol. 514] A. That is right.

Q. To the best of your knowledge, this is a correct reflection of the information shown on the waybills and demurrage sheets that you have described?

A. That is correct.

Q. And the truckaway time is merely put in for purposes of comparison?

A. That is right.

Mr. Meinhold: You may cross-examine.

May the document be marked, Mr. Examiner?

Exam. Linn: It will be marked as Exhibit 32 for identification.

(Applicant's Exhibit No. 32, Witness Robinson, was marked for identification.)

Cross examination.

By Mr. Handler:

Q. With respect to the rail transit time shown on Exhibit 32, you stated that you subtracted the time of delivery to the railroads, the time of shipment, from the time of delivery to the consignee?

A. That is correct.

Q. Taking a rail car, when did the time start?

A. For my purpose, it would start when it was received, that day, which in this case, looking at item no. 1 on page 1, at South Gate, California, that indicates for that carload shipment, the date of shipment was January 14. That car [fol. 515] was released to the Southern Pacific Company on the 14th and the waybill was processed on the 14th.

Q. Where is it received, right on the premises of the General Motors Corporation?

A. The shipping document, the shipping order, is received there, a messenger runs between the South Gate plant and the Los Angeles freight station, and the freight bills are typed there.

Q. All right. Now, you computed from that time, let's say we are going to Portland, for example, and if the train arrives in Portland at 2 a.m., or wait a minute, at 11 p.m. on the 1st day of the month, but delivery is not effected to the consignee until 10 a.m. the next day, the second of the month, then you would take the 2nd of the month as a delivery date, would you not?

A. I would take the day of the month that he received the car.

Q. Did you hear Mr. Booth's testimony about Exhibit No. 8?

A. No.

Q. All right. You don't know, then, how he computed the truckaway transit time?

A. No, I do not. I am not concerned with that.

Mr. Handfer: That is all I have.

Mr. Bieneman: No questions.

Mr. Beardsley: No questions.

Mr. Smith: No questions.

Mr. Burchell: No questions.

[fol. 516]

OFFER IN EVIDENCE

Mr. Meinhold: I will offer the exhibit, Mr. Examiner.

Exam. Linn: Exhibit 32 for identification is received in evidence.

(Applicant's Exhibit No. 32, Witness Robinson, was received in evidence.)

[fol. 517] C. S. MacKENZIE was sworn and testified as follows:

Direct examination.

Mr. Johnson: I might state that Mr. MacKenzie's exhibits were distributed to the parties last Friday.

By Mr. Johnson:

Q. Will you please state your name and business address?

A. C. S. MacKenzie, 65 Market Street, San Francisco, California.

Q. By whom and in what capacity are you employed?

A. I am employed by the Southern Pacific Company. I am Assistant General Auditor.

Q. How long have you been employed by the Southern Pacific Company?

A. I have been employed in the accounting department of the Southern Pacific Company continuously for approximately 34 years. I have held my present position of Assistant General Auditor since October 1949.

Mr. Earp: I don't seem to have a copy of Mr. MacKenzie's exhibits. I wonder if I might have a copy.

Mr. Johnson: Yes.

By Mr. Johnson:

Q. Mr. MacKenzie, who maintains the accounting records [for 518] of PMT?

A. The Pacific Motor Trucking Company is a 100 per cent owned subsidiary of the Southern Pacific Company and the accounting records for the Pacific Motor Trucking Company are maintained in the Southern Pacific Company's Accounting Department by Southern Pacific Company employees.

Q. What, if any, arrangement is made for reimbursement of the Southern Pacific by the PMT?

A. The Southern Pacific charges the Pacific Motor Trucking Company for the cost of the service.

Q. Do you know what the amount is currently?

A. The monthly charge against the Pacific Motor Trucking Company for accounting work done by the Southern Pacific Company at the present time is \$39,242 per month.

Q. What arrangements are made for adjustments of those charges from time to time?

A. A survey is made from time to time as to the volume of work and the time spent by the various accounting department employees and the charge is adjusted from time to time; and particularly, if there is any wage increases, anything of that kind, or any added volume of work, why a new survey is made.

Q. Have certain exhibits been prepared under your direction and supervision for use in this proceeding?

A. Yes.

[fol. 519] Q. Are they true and accurate to the best of your knowledge and belief?

A. Yes.

OFFERS IN EVIDENCE

Mr. Johnson: I would like to offer for identification an exhibit entitled, "Pacific Motor Trucking Company, Statement of Net Income For 11 Months Ended November 30, 1956."

Exam. Linn: That may be marked Exhibit 33 for identification.

(Applicant's Exhibit No. 33, Witness MacKenzie, was marked for identification.)

By Mr. Johnson:

Q. Will you proceed to describe this exhibit?

A. This is an exhibit showing the income account of Pacific Motor Trucking Company for the 11 months ended November 30, 1956. The net income for that period is shown on the statement. It is \$665,231.

There are three sheets following, which is a balance sheet statement showing assets and liabilities, and profit and loss account, for the Pacific Motor Trucking Company as of November 30, 1956.

Q. Has information as to the net income for the entire year become available to you since this exhibit was prepared?

A. Yes. At the time we prepared this exhibit the accounts for December had not yet been closed. They have been closed quite recently and we now have the net income for the 12 months ended December 31, 1956.

[fol. 520] Q. Will you please state what that is?

A. \$424,713.

Q. Will you also please state for the record the net income of PMT for the years 1955, 1954 and 1953 separately?

A. The net income for 1955 was \$682,530; for 1954, \$663,091; and for 1953 the net income was \$459,766.

Exam. Linn: Do you have the operating revenues for those years?

The Witness: Yes. The operating revenues for the year 1955 were \$19,886,264.

Mr. Farrell: For 1953?

The Witness: 1955.

The operating revenues for 1954 were \$13,785,139. The operating revenues for the year 1953 were \$11,831,157.

By Mr. Johnson:

Q. Have you prepared an exhibit giving a break-down of the operating revenues shown on Exhibit 33?

A. Yes, I have.

Mr. Johnson: May I offer for identification an exhibit entitled "Pacific Motor Trucking Company, Statement of Gross Revenues"?

Exam. Linn: That may be marked Exhibit 34 for identification.

(Applicant's Exhibit No. 34, Witness MacKenzie, was marked for identification.)

By Mr. Johnson:

Q. Will you please describe and explain that exhibit? [fol. 521] A. As shown on Exhibit No. 33, the operating revenues for the 11 months ended November 30, 1956, were \$26,357,310. Exhibit No. 34 breaks those operating revenues down as between the revenues from the contract carrier service for General Motors Corporation which is Item 1 of the exhibit.

Item 2 of Exhibit 34 shows the inter-city common carrier and local cartage revenues, for services performed for the general public.

Item 3 is the revenues from rail lines, from the rail lines for substitute service, pick-up and delivery and so forth.

Item 4 is the "Other Revenue."

Q. During the period shown on Exhibit 34 is it not a fact that PMT was operating PFL under a temporary lease authority from the Interstate Commerce Commission?

A. That is my understanding, yes.

Mr. Johnson: I would next like to offer for identification and exhibit entitled, "Pacific Motor Trucking Company,

Statement of Contract Carrier Operations for General Motors Corporation."

Exam. Linn: That may be marked Exhibit 35 for identification.

(Applicant's Exhibit No. 35, Witness MacKenzie, was marked for identification.)

By Mr. Johnson:

Q. Will you please comment on this exhibit, Mr. MacKenzie?

[fol. 522] A. Exhibit No. 35 shows the revenues and expenses of the contract carrier operations for account of General Motors Corporation for the years 1953, 1954, 1955 and 11 months ended November 30, 1956. Our accounting records are maintained so as to have a segregation of both the revenues and the expenses incurred in connection with the General Motors operations. It shows that for the year 1953 we had a net income from these operations of approximately \$90,699.

Q. I believe those figures are adequately shown on the exhibit. Do you have the net income from this operation for the full year of 1956?

A. Yes. Since we prepared this exhibit the December figures became available. The net income for the full year from the General Motors contract operations, the full year of 1956, was \$129,245.

Q. Have you prepared an exhibit giving the operating ratio based on the contract carrier operation reflected in your Exhibit 35?

A. Yes, I have.

Mr. Johnson: May I have marked for identification an exhibit entitled, "Pacific Motor Trucking Company, Operating Ratio—Contract Carrier Operations for General Motors Corporation"?

Exam. Linn: Exhibit 36 for identification.

(Applicant's Exhibit No. 36, Witness MacKenzie, was marked for identification.)

[fol. 523]

By Mr. Johnson:

Q. What comment do you have with respect to that exhibit?

A. This exhibit shows the operating ratios for the years 1953, 1954, 1955 and 1956, from the General Motors operations, and those operating ratios range from about 84 percent to approximately 88 percent during this period.

Q. Have you also prepared an exhibit showing the PMT investment as of December 31, 1956 in facilities used in the contract carrier operations for General Motors Corporation?

A. Yes, I have.

Mr. Johnson: May I ask that that exhibit be identified as Exhibit 37?

Exam. Linn: It may be so marked.

(Applicant's Exhibit No. 37, Witness MacKenzie was marked for identification.)

By Mr. Johnson:

Q. Will you please comment briefly on this exhibit?

A. This exhibit shows the Pacific Motor Trucking Company investment in equipment and other facilities at the three plants. It shows the accrued depreciation and the depreciated value. These are book figures. The present depreciated value at the end of 1956, of those facilities was approximately \$1,050,720.

Q. Do you have the comparable net investment figure for December 31, 1955?

[fol. 524] A. Yes, I have. The original investment at the end of 1955 in these facilities was \$1,093,694, and the depreciated value of those facilities at the end of 1955 was \$872,384.

Q. Have you made a calculation of the rate of return on the PMT investment?

A. Yes, I have.

Q. And shown in this Exhibit 37 for the year 1956? 7

A. Yes.

Q. What was that return?

A. Approximately 12 percent.

Q. Do you have a comparable rate of return for the Southern Pacific Company during that period?

A. Yes. I have had occasion to enter the Southern Pacific rate of return in different cases, and I am quite familiar with it. For 1956 the rate of return to the Southern Pacific Lines, was 3.56 percent.

Q. For 1956?

A. Yes—no, that was for 1955. Excuse me. The return for 1956 will be slightly less, somewhat less than that because our operating income for the Southern Pacific has declined in 1956 as compared with 1955, although the rate of return for 1956 has not yet been calculated.

Q. Have you prepared an exhibit entitled, "Automotive Units Transported By Pacific Motor Trucking Company and Gross Freight Revenues from Contract Carrier Operations with General Motors Corporation"?

[fol. 525] A. Yes, I have.

Mr. Johnson: May that be marked for identification?

Exam. Linn: It may be marked Exhibit No. 38 for identification.

(Applicant's Exhibit No. 38, Witness MacKenzie, was marked for identification.)

By Mr. Johnson:

Q. Will you please comment on this exhibit?

A. This exhibit was prepared from our waybill records of all of the shipments and it covers the year 1955 and the first six months of 1956. It shows the number of units and the PMT revenue as abstracted from the waybills covering the shipments.

Q. Mr. MacKenzie do you know the investment of the Southern Pacific Company in the property leased to the PMT at Melrose?

Mr. Earp: Pardon me. Are you referring to the property leased to General Motors and by them, in turn, leased back to PMT?

Mr. Johnson: No. That is the South Gate situation. I am now speaking of the Melrose operation.

A. Yes, I have that information here.

By Mr. Johnson:

Q. Will you please state what it is?

A. The property owned by the Southern Pacific Company and leased to the Pacific Motor Trucking Company at Melrose for use in the General Motors Contract Carrier Operation, the investment in that property by the Southern Pacific [fol. 526] Company is \$18,672.

Q. Do you have a comparable figure for the Raymer operation?

A. Yes. The property owned by the Southern Pacific and leased to the PMT at Raymer for this operation, the investment in that property is \$101,259.

Q. Do you know what the Southern Pacific Company investment is in the property at South Gate, which is leased to General Motors and, in turn, leased by General Motors to PMT?

A. Yes. The investment in this South Gate property that you mentioned is \$87,213.

Q. Now, will you please state the rentals paid by PMT to the Southern Pacific for the Melrose property, and also give the same information with respect to Raymer and South Gate?

A. The rentals paid to the Southern Pacific Company for the Melrose property is \$367 a month. For the Raymer property it is \$908 a month. The rentals that the Southern Pacific Company collects for the property it leases at South Gate is approximately \$1,944 a month.

Q. Now, with respect to South Gate, from whom does the Southern Pacific collect that rental?

A. That property, as I understand it, is leased by the General Motors people.

Q. What was the South Gate rental figure that you gave?

A. \$1,944.

Q. Who pays that to who?

[fol. 527] A. That is paid by General Motors to the Pacific Motor Trucking Company—to the Southern Pacific Company, I should say.

Q. Do you know what amount PMT pays to General Motors for the sub-lease of that property.

A. Yes. PMT pays the same rental figure to General Motors.

Q. Do you know whether or not PMT in the last two years, has had occasion to make some very substantial capital expenditures?

A. Yes, they have.

Q. Would you give us one or two illustrations?

A. During the last few years Pacific Motor Trucking Company has expended approximately \$5,661,000 for new equipment for use in the Southern Pacific operation of trailer-on-flatcar service, commonly known as piggyback service.

Q. Are those units leased to the Southern Pacific by PMT?

A. Yes, they are.

Q. What expenditure was involved in the PFL acquisition?

A. The expenditure was nearly \$2,000,000 as I recall.

Mr. Johnson: I would like to offer Exhibits 33 to 38 inclusive.

Exam. Linn: They are received in evidence.

(Applicant's Exhibits Nos. 33 to 38 inclusive, Witness MacKenzie, were received in evidence.)

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[fol. 528] L. S. DAVIS, JR. was sworn and testified as follows:

Direct examination.

Mr. Cronon: Mr. Examiner, I believe that these exhibits which have been passed out will have to be marked separately. May we have them marked in the order in which they are set up, please.

First, the map, Exhibit 41.

Next, List of Stations in Geographical Order, Exhibit 42.

List of Stations Located on Spokane Portland & Seattle Railway Company, Exhibit 43.

Freight Train Schedules, Exhibit 44.

Statement Showing Number of Carloads, Exhibit 45.

Exhibit Showing Time in Transit, as No. 46.

Spokane Portland & Seattle Railway System Expenditures for Additions and Betterments, Exhibit 47.

Proportion of Loss and Damage Claims, as Exhibit 48.
Average Revenue Per Ton and so forth, Exhibit 49.

[fol. 529] Exam. Linn: Documents may be so marked for identification.

(Protestant's Exhibits Nos. 41 to 49 inclusive, Witness Davis, were marked for identification.)

By Mr. Cronon:

Q. Will you state your name, occupation and business address.

A. L. S. Davis, Jr., Assistant to the General Freight Agent, 1101 American Bank Building, Portland, Oregon.

Q. How long have you been employed by the Spokane Portland & Seattle Railway Company?

A. Since 1939.

Q. Have you also been associated with the Freight Traffic Department?

A. Yes.

Q. Have you with you, Mr. Davis, some exhibits which were prepared for introduction in this case?

A. I have.

Q. Are they the ones which have been marked Nos. 41 to 49 inclusive for identification?

A. That is correct.

Q. Starting with Exhibit No. 41, will you proceed to explain them?

A. Exhibit 41 is a map showing the Spokane Portland & Seattle Railway Company System. The SP&S portion of the system is outlined in blue, running from Spokane, Washington on the east to Seaside, Oregon, on the west.
[fol. 530] The Oregon Electric Railway Company is outlined in green, running from Portland, Oregon on the north to Eugene, Oregon on the south.

The Oregon Trunk Railway is outlined in red, running from Wishram, Washington on the north to Bend, Oregon on the south.

The latter two companies are wholly owned subsidiaries of the SP&S Railway Company.

Q. Is the main line of the Southern Pacific Company from California to Portland shown by a fine black line to the left of the green line?

A. Yes, it is. Our line somewhat parallels the Southern Pacific Company between Portland and Eugene.

There is one thing I forgot to comment about on the map, and that is the points of interchange with connecting lines are shown in the little box squares, with a little line drawn to the town and the lines with whom interchange is made is shown in those little boxes. For example, at Spokane, Washington connection is made with the Northern Pacific Railway Company, Great Northern Railway Company, CMSt. P&P Railroad Company, Union Pacific Railroad Company and the Spokane International Railway.

Q. That same explanation will go for every interchange point?

A. That is correct. They are all outlined, the various points of interchange.

Q. Will you now take up Exhibit No. 42?

[fol. 531] A. Exhibit No. 42 is a list of stations in geographical order of the SP&S System showing whether the station is served as an agency or a non-agency station.

Pages 2 to 4 cover the SP&S.

Pages 5 to 6 cover the Oregon Electric Railway and page 7 covers the Oregon Trunk Railway.

The balance is self-explanatory.

Q. What determines whether or not an agent is provided at a station on one of your lines?

A. It depends on the volume of traffic handled at the particular station which, of course, is reflected in the population immediately surrounding that area. If there is very little business in and out of a given station we naturally don't provide an agent at that point.

Q. Would you point out, for the benefit of the Commission, well, take a part of the State of Washington, where you have non-agency stations, and tell us what type of territory that is?

A. For example, on page 4 of the exhibit, the area, approximately from Roosevelt, Washington, which is an agency station, clear through to Spokane, Washington, that is a large wheat producing territory and there is not too large a population at our individual stations. As a result, there are agency stations scattered throughout that territory, but there are many, many non-agency stations.

[fol. 532] Q. That requires billing at the open station then?

A. That is correct.

Q. Now, Exhibit No. 43?

A. No. 43 is a list of stations on the Spokane Portland & Seattle Railway Company System Lines, showing the location and a description of the facilities for the unloading of automobiles from rail cars. The exhibit is, I believe, self-explanatory. The platforms are situated at car level height so that the automobiles can be adequately removed from the rail box cars.

Q. Was the information contained in Exhibits 42 and 43, secured by you or at your direction, from company records.

A. Yes, it is.

Q. Was the map, Exhibit No. 41, prepared by you or someone in your behalf?

A. It was partially prepared by myself and partially by our Engineering Department.

Q. From your knowledge of your company does it truly represent the system, including the interchange points?

A. It does.

Q. Exhibit 44?

A. Exhibit 44 is a statement showing the freight train schedules of the SP&S System between principal points in connection with traffic moving from California.

On page 2 is shown the schedules of the SP&S Railway [fol. 533] Company.

On page 3 is shown the schedules of the Oregon Electric Railway Company.

On page 4 the schedules of the Oregon Trunk Railway are shown.

On page 5 is shown the coordinated schedules of which we participate in by the Bieber Gateway, which is a coordinated joint service of all carriers.

Q. Are those so-called published schedules?

A. Are you speaking with respect to page 5?

Q. I was referring to pages 2, 3 and 4.

A. Some of these schedules are run as extra trains. They are not a published schedule. However, these are

the departure times, that the trains leave and they run very close to those. There is an arrangement, and I don't know whether it is due to a Union agreement or just what it is, but I believe, so far as our scheduled trains are concerned, what we call a scheduled train, that the only train is Train-276 and Train 293, I believe, but these schedules that are shown in the exhibit are the departure times that these trains run on.

Mr. Johnson: Schedule time?

The Witness: That is right.

By Mr. Cronon:

Q. And that information was secured by you from the records of your railroad, is that correct?

A. That is right.

[fol. 534] Q. It doesn't purport to show actual performance, however, does it?

A. No, it does not. However, they run very close to the times there with the exception of the ones—

Mr. Johnson: I object to that. No proper foundation has been laid. This witness has not been qualified to testify to that.

Mr. Cronon: I think that is a proper objection.

Exam. Linn: It may go out insofar as it relates to the actual operating time.

By Mr. Cronon:

Q. Now, take Exhibit No. 45?

A. Exhibit No. 45 is a statement showing the number of carloads, number of tons, and the SP&S system lines division of the freight revenue on carloads of automobiles which terminated on the SP&S system which originated in the State of California for the year 1956.

Q. Was that taken from the records of your company?

A. That is correct.

Q. Do you believe the figures to be true and correct?

A. They are.

Mr. Vaughan: A question there. Does that include all automobile traffic, or only that originating at Chevrolet plants?

The Witness: That covers all automobile traffic.

By Mr. Cronon:

Q. Exhibit No. 46?

[fol. 535] A. Exhibit No. 46 is an exhibit prepared showing the transit time on carloads of automobiles moving from the California area, from the points of origin shown to the various destinations, showing the arrival time at destination, and the actual placement time, together with the days en route, and the days en route including placement for delivery.

I don't believe there is anything else that needs explanation.

Q. I think you mentioned to me you wanted to comment on the third item?

A. Yes. In connection with the third item, car SP 190076, the arrival time is shown as 11:35 a.m. October 13th with the placement time two days later. October 13 was a Saturday and the placement of the car was placed at 9:15 a.m. October 15, which was a Monday.

Q. What is the basis for the information shown in Exhibit 46?

A. These were taken from company records, from the waybill information, and also from the demurrage records.

Q. Do you have those records with you?

A. I have photostatic copies of the waybills, but the demurrage records are in large bound volumes and it would mean quite a chore to have those taken apart and photostatic copies made.

Q. You have the waybills with you?

A. I have photostatic copies of the waybills here in the hearing room, yes.

Q. Exhibit 47?

[fol. 536] A. Exhibit No. 47 is a statement showing the expenditures for additions and betterments, for road and equipment, for the years 1952 through 1956, and the estimated expenditures which will be made for the year 1957.

I believe the balance of the exhibit needs no further comment.

Q. Those figures, of course, were taken from company records?

A. That is correct.

Q. Do you believe them to be true and correct?

A. I do.

Q. Exhibit No. 48?

Mr. Johnson: Just a moment. Were the estimated expenditures for 1957 taken from regular company records?

The Witness: The estimated expenditures for 1957 were taken from the annual budget, which is prepared in advance, and those were submitted to me.

By Mr. Cronon:

Q. All right, Mr. Davis, Exhibit 48?

A. Exhibit No. 48 is a statement showing the proportion of loss and damage claims paid compared to the proportion of gross freight revenue for the handling of passenger and freight automobiles. It shows that our loss and damage per freight car has amounted to 17 cents for the year 1956.

Q. The information is shown on the exhibit itself?

A. It is. I might mention that the Annual Report for the year 1956 has not as yet been submitted to the Interstate Commerce Commission. However, these figures were [fol. 537] obtained from our Accounting Department who prepares that report.

Q. You believe them to be true and correct?

A. I do.

Q. Exhibit 49?

A. Exhibit No. 49 is a statement of the average revenue per ton on freight and passenger automobile traffic originating in California, compared with the average revenue per ton for the six commodity groups shown for the year 1956. It shows the tons of each of the commodities, the revenue, and the average revenue per ton.

Q. Did you set up this exhibit yourself?

A. It was prepared at my direction. Part of it I compiled myself.

Q. Do you believe it to be true and correct?

A. I do.

Q. Mr. Davis, did you make a computation as to the average weight of a car of automobiles from the three General Motors plants involved in this application?

A. I have.

Q. Did you make that computation separate for each one of the three plants?

A. I have.

Q. How did you make the computation?

A. By taking the total number of carloads from each of the three plants and dividing that into the total tons transported from that plant, to come out with an average [fol. 538] weight of so many tons per freight carload.

Q. Now, give these figures separately, if you will, please, as to each of the three plants and designate the plant you are talking about.

A. From South Gate, California—these are cars which originated at the General Motors plants—at South Gate, California, the average was 7.703 tons per freight carload.

Mr. Frizzell: The period?

The Witness: For the year 1956.

A. (Continuing) This only covers traffic which terminated on the SP&S system.

From the Oakland plant, 6.77 tons per freight carload.

From Raymer, California, 6.85 tons per freight carload.

Exam. Linn: I take it these are short tons?

The Witness: That is correct.

By Mr. Cronon:

Q. Has your railroad, or one of its subsidiaries, terminated shipments, for example, to the Oregon Trunk Railway which originated at the General Motors Oakland plant?

A. We have.

Q. And have those shipments been destined to stations between Wishram and Bend, Oregon?

A. They have.

Q. Have you some examples with you, Mr. Davis, taken from records which you have with you, of such shipments?

[fol. 539] A. I have.

Q. Will you proceed to give two or three or four representative examples?

A. We have had shipments moving from the Oakland plant of the General Motors Company to Bend, Oregon, which is shown on Exhibit 41 at the extreme southern end of the red line, which have moved via the Southern Pacific Company to Portland, thence east over the SP&S shown on the blue-line, to Wishram, Washington; thence to south to Bend, Oregon, on the red line.

We have also had shipments via the same route to Redmond, Oregon, which is about 16 miles north of Bend, Oregon, shown on the red line.

Mr. Johnson: May I inquire what this testimony is based on?

The Witness: This last statement?

Mr. Johnson: Yes.

The Witness: On information taken from our company records. However, I don't have that here.

Mr. Johnson: What records are they?

The Witness: From our reports that we have in our office, which we have on file in our office.

Mr. Johnson: In Portland?

The Witness: Yes, in Portland.

Mr. Johnson: Are they here with you?

The Witness: No. Just a moment, I believe I have an [fol. 540] example of some of these here on these photostatic copies.

Yes, I have an example of one photo copy of one waybill here, covering destination, Redmond, Oregon, which is included in Exhibit 46.

By Mr. Cronon:

Q. You might give the car number on that right now, Mr. Davis.

A. That is on the fourth line from the bottom of Exhibit 46.

Mr. Johnson: How about the Bond, Oregon shipments?

The Witness: I don't have any records here on that.

The Redmond, Oregon car is indicated on Exhibit 46 as SP 682294, the fourth one from the bottom of the exhibit. I do have a photo copy of that waybill here.

By Mr. Cronon:

Q. Mr. Davis, do you know of your own knowledge that there are other shipments besides the ones shown on Exhibit 46 which moved over that route?

Mr. Johnson: I object to that as not being the best evidence.

Mr. Cronon: He has knowledge of it, Mr. Examiner.

Exam. Linn: He may indicate how he gained such knowledge.

A. I have personally examined our records in Portland that we have in our office. I might mention what those records are. We have a report in our office which is forwarded to our office from each of our agents, showing the car number, the date, the origin, the consignee, the weight, and the freight charges, and the route. That information is tabu-[fol. 541] lated from the waybill which the agent terminates, and those reports are in our office, that is where this information was obtained.

Mr. Cronon: Mr. Examiner, I don't know whether that is an actual objection, but it seems to me that a man in the freight traffic department of the SP&S can testify that he knows from his own knowledge of shipments over certain routes. He has to do with rates and traffic.

Mr. Johnson: I wasn't making an objection. You asked if he knew of his own knowledge. I wanted to know the basis for the statement. Now, he says it is certain records. That is all I care about.

By Mr. Cronon:

Q. I have forgotten, Mr. Davis, but did you mention the railroads involved in that route when you were giving your testimony?

A. I believe I did. You are talking about the routes to Bend and Redmond?

Q. Yes, out of Oakland.

A. I believe I did.

Q. That is all right, then. Have you computed the rail mileage from Portland to Wishram?

A. Yes. The distance from Portland to Wishram, Washington is 106 miles. The distance from Wishram, Washington to Redmond, Oregon is 135 miles. The distance from Wishram, Washington to Bend, Oregon is 151.5 miles.

Q. Do you know, Mr. Davis, whether or not there is a [fol. 542] more direct rail route to Redmond and Bend, Oregon from Oakland, California than the one you have just been testifying about?

A. Yes, there is.

Q. What is that route?

A. Shipments could move via the Western Pacific to Bieber, California, Great Northern Railway to Bend, Oregon; thence Oregon Trunk Railway to Redmond, Oregon.

Q. Is there also a route via the Southern Pacific out of Oakland into Klamath Falls to Chemult?

A. Yes. There is a route available by the Southern Pacific to Chemult, Great Northern to Bend, Oregon, and thence Oregon Trunk to Redmond, Oregon, also.

Q. Do you have any similar examples in connection with movements out of Oakland, California to Eugene or Salem, Oregon?

A. Yes. We have had shipments move via the Bieber gateway route from Oakland to both Eugene and Salem, Oregon; moving via the Western Pacific to Bieber, California, thence Great Northern to Portland, Oregon, which route follows over the Oregon Trunk and SP&S Railway. However, it is actually a Great Northern movement from Bend to Portland, Oregon, and there delivered to the Oregon Electric Railway for destinations, Salem and Eugene, Oregon, as shown on the green line in Exhibit 41.

Q. That is through Wishram, Washington?

A. Wishram, Washington, yes.

[fol. 543] Mr. Johnson: May I inquire how many shipments you have had of that sort?

The Witness: To Eugene?

Mr. Johnson: Yes.

The Witness: In 1956 we had four carloads to Eugene, and three carloads to Salem.

OFFERS IN EVIDENCE

Mr. Cropon: I will offer Exhibits 41 to 49 inclusive, and that completes my direct.

[fol. 544] RAY B. NEEDHAM was sworn and testified as follows:

Direct examination.

By Mr. Andersen:

Q. State your full name, please.

A. Ray B. Needham.

Q. Your business address?

A. 107 West South Temple Street, Salt Lake City.

Q. Will you give your title, please?

A. Vice President in Charge of Traffic, Bamberger Railroad Company.

Q. How long have you been in the Traffic Department of the Bamberger Railroad Company?

A. Some 36 years.

Q. Mr. Needham, have you prepared certain documents for presentation at this hearing and were they prepared under your direction and control?

A. They were, yes.

[fol. 545] Q. Were the facts and figures therein taken from the company records?

A. They were.

Q. And to your knowledge and belief are they true and accurate statements?

A. Yes, they are.

Mr. Andersen: May I have this marked for identification, Mr. Examiner?

Exam. Linn: The document may be marked Exhibit No. 50 for identification.

(Protestant's Exhibit No. 50, Witness Needham, was marked for identification.)

By Mr. Andersen:

Q. Mr. Needham, referring to the Exhibit that has been marked Exhibit No. 50, and turning to the map, which constitutes sheet 1, would you explain what this map purports to show, please?

A. This is a map showing the geographical location of stations on the Bamberger Railroad showing Ogden, Utah as the northern terminus; Salt Lake City, Utah as the southern terminus.

Q. Would you indicate what the stars mean and give their locations?

A. The stars at the various stations indicate that there is an unloading auto dock at these points.

Q. Would you read into the record the names of these places?

A. Salt Lake City, Bountiful, Layton and Ogden. [fol. 546] Q. Does this map also purport to show, Mr. Needham, the points of interchange with connecting railroads?

A. Yes, it does.

Q. Would you indicate what those points of interchange are and with what railroad the Bamberger Railroad interchanges with at those points?

A. Beginning on the south part of the map, D&RGW. Western Pacific, designated as "Transfer." That should be "Interchange." I would like the word "Interchange" there rather than "Transfer." That is at what we call Salt Lake Junction, south of Salt Lake City, outside the Salt Lake City switching limits.

Further up the map you will note the Union Pacific interchange. That is within the confines of the switching limits of Salt Lake City.

North, to North Salt Lake, you will note an interchange with the D&RGW.

At Ogden, Utah, we have a connection with the Union Pacific and Southern Pacific, also with the D&RGW.

Q. Now, referring to Sheet 2, Mr. Needham, would you briefly explain what constitutes this sheet?

A. Sheet No. 2 gives a list of agency and prepay stations on the Bamberger Railroad, showing the location of the freight junction, freight interchanges.

Q. Am I correct in saying, Mr. Needham, that the places where the auto unloading docks are found are indicated on [fol. 547] here as being agency stations?

A. Yes, sir.

Q. Referring to Sheet No. 3, Mr. Needham, will you explain briefly what the figures are that constitute this sheet?

A. Sheet No. 3 is a consolidated statement of improvements completed or in the course of construction on the Bamberger Railroad main line between Salt Lake City and Ogden, during the years 1952 to the present time.

Q. Would you explain briefly, Mr. Needham, the estimated figures that appear at the bottom of this sheet, that is, beginning with "Replacing Rail in Main Tracks Between Salt Lake and Ogden, 1.92 Miles," estimated figure of \$92,050.12?

A. That covers the replacing of 75 pound rail to 90 pound rail and, in some cases, 112 pound rail.

On the spur tracks, the estimated figure of \$31,000 odd that covers the replacement of 75 pound rail to 85 and 95 pound rail.

Q. Has this work been started and is it currently in progress?

A. Yes, sir.

Q. Referring to the \$60,000 that is indicated at the bottom of that sheet, Mr. Needham, is this work being progressed at this time?

A. It is.

Q. Referring to the fourth sheet which is entitled "Recapitulation 1956," would you explain briefly what this is? [fol. 548] A. That shows the number of carloads by months, also the total freight charges, and the Bamberger Railroad revenue proportion covering carloads of automobiles coming under the category of this application.

Q. That is, automobiles moving from the General Motors plants in California that we are here concerned with, is that right?

A. That is right.

Q. Are there any figures deducted, Mr. Needham, from the total freight charges, such as loading and unloading charges?

A. Yes. In many cases there are loading allowances at the point of origin, based on \$2 per car and then at destination the rates charged include the unloading and delivery of the automobiles to the consignee. That delivery is either accomplished by the railroad itself, or where the consignee chooses to unload and haul his own automobiles to his place of business, there is a provision for an allowance to the consignee on the basis of his actual cost of that service with a maximum of \$5 per automobile.

Q. Is that figure paid by the delivering carrier, which is Bamberger, to the consignee?

A. It is paid by us but absorbed proportionately by all the carriers involved in the traffic.

Q. Mr. Needham, on the Bamberger Railroad do you publish train schedules?

[fol. 549] A. No, we don't publish train schedules as such.

[fol. 550] Cross examination.

[fol. 551] By Mr. Johnson:

Q. How many cars did you handle of Ford automobiles from California?

A. Quite a number of them.

Q. Do you have any record of that with you?

A. I can get the information.

Q. Do you have it right now?

A. It is available.

[fol. 552] Q. Are you prepared to answer right now on that?

Mr. Andersen: I will stipulate with counsel that we have the number of cars handled.

A. I haven't got the information in front of me, but it is available.

By Mr. Johnson:

Q. How about Mercury, do you have any data on that?

A. No. We don't handle any Mercurys.

Q. How about any other types of cars, Studebakers, and so forth?

A. Are you speaking of the Pacific Coast?

Q. Yes, from California.

A. No, I don't recall that we handled any Studebakers.

Q. How about Chryslers?

A. No, sir.

Q. As a matter of fact, there is quite a truckaway movement from California points into Utah, isn't there?

A. Too much to suit us.

Q. You know as a matter of fact that the other automobile assemblers are using truckaway to quite an extent, aren't they?

A. I would assume they are using that method.

Q. You have seen them, haven't you?

A. Yes.

[fol. 553]

OFFER IN EVIDENCE

Mr. Andersen: At this time I offer in evidence Exhibit No. 50 for identification on behalf of the Bamberger Railroad Company.

Mr. Johnson: No objection.

Exam. Linn: Exhibit 50 for identification is received in evidence.

(Protestant's Exhibit No. 50, Witness Needham, was received in evidence.)

Mr. Cronon: I have passed out a set of exhibits which I ask be marked for identification at this time.

I ask that the map be marked as Exhibit 51 for identification.

Exhibit 52 will be the list of stations in geographical order, located on the Portland Traction Company, where there are facilities for handling freight.

Mr. Johnson: What witness will these exhibits be introduced through?

Mr. Cronon: Mr. Schlaf.

The list of stations located on the Portland Traction Company, where there are facilities for unloading from rail cars, will be Exhibit 53.

The interchange schedules will be Exhibit 54.

The statement showing number of carloads and tons, Exhibit 55.

[fol. 554] Time in transit, Exhibit 56.

Expenditures, Exhibit 57.

Proportion of loss and damage claims, Exhibit 58.

Average revenue, Exhibit 59.

Exam. Linn: The documents may be marked in the manner specified.

(Protestant's Exhibits Nos. 51 to 59 inclusive, Witness Schlaf, were marked for identification.)

Mr. Lyons: Before counsel proceeds, Mr. Examiner, on behalf of the Insured Transporters, Inc., inasmuch as we have been unable to ascertain when our witnesses will be ready to proceed, we ask leave at this time to dismiss the application of Insured Transporters, Inc.

Exam. Linn: I believe that is a request which should be made on the record in the Insured Transporters, Inc. case.

We will go off the record in this case now on hearing.

(Remarks off the record.)

Exam. Linn: Back on the record in the PMT case.

Mr. Cronon: I will call Mr. Schlaf.

FRED V. SCHLAF was sworn and testified as follows:

By Mr. Cronon:

Q. Will you state your name, and spell your last name, please?

A. Fred V. Schlaf—S-e-h-l-a-f.

Q. Will you state your business address?

[fol. 555] A. 1635 Southeast Water Avenue, Portland, Oregon.

Q. By whom are you employed?

A. By the Portland Traction Company.

Q. In what capacity?

A. As Traffic Manager.

[fol. 556]

OFFERS IN EVIDENCE

Mr. Cronon: I will offer Exhibits 51 through 59 inclusive.

Mr. Johnson: I have no objection, except to the transit time exhibit, which I am willing to waive my objection subject to our stipulation.

Mr. Cronon: Yes.

Mr. Johnson: Can that be understood as to all transit time exhibits so I won't have to repeat it?

Exam. Linn: Do you have in mind that applicant may desire to produce an exhibit showing transit time?

Mr. Johnson: Yes, and also an exhibit showing gross revenues on the shipments.

Mr. Cronon: In other words, neither party will have to produce the underlying documents.

Mr. Johnson: That is correct.

Mr. Cronon: Agreeable.

Exam. Linn: Exhibits 51 through 59 are received in evidence.

(Protestant's Exhibits Nos. 51 through 59 inclusive, Witness Schlaf, were received in evidence.)

Exam. Linn: Have you completed your inspection of the documents underlying the exhibits of the witness, Davis?

Mr. Johnson: We were going to look at the waybills which have been brought here in support of Exhibit 46. We have done so. They will not enable us to check train arrival, or actual placement time. However, we are perfectly willing to be governed by this overall stipulation which covers that point.

[fol. 557] Exam. Linn: Exhibits 41 to 49 inclusive are also received in evidence at this time.

(Protestant's Exhibits Nos. 41 to 49 inclusive, Witness Davis, were received in evidence.)

[fol. 558] H. E. SHUMWAY was sworn and testified as follows:

Direct examination.

[fol. 559] Exam. Linn: The witness will proceed with the reading of the statement, down to the first full paragraph on page 11, and at that point you may state your objection, Mr. Johnson.

A. (Reading) My name is H. E. Shumway. I am employed as General Superintendent of Transportation for the Union Pacific Railroad Company, with offices at 1416 Dodge Street, Omaha, Nebraska. I have been employed by the Union Pacific Railroad Company for 40 years in the Operating and Transportation Departments and have held my present position for a total of about 8 years.

I am familiar with the scope of the applications in [fol. 560] volved in these proceedings and at direction of counsel, certain exhibits have been prepared by me, or under my supervision.

There has been marked for identification as Exhibit 60, a multiple page exhibit consisting of nine parts. Part A of said exhibit is a map of the Union Pacific System showing principal points served. Red circles on the exhibit indicate interchange points where the Union would normally receive involved traffic, black circles indicate locations of automobile assembly plants involved and green boundary indicates states involved.

The assembly plants at Oakland, California, South Gate, California and Raymer, California are located on Southern Pacific. The Southern Pacific furnishes the equipment for loading at Oakland, California, Raymer, California and South Gate, California. However, we do on occasion when requested furnish the Southern Pacific automobile cars for movement to South Gate for loading.

Part B of the exhibit consists of statement of equipment owned and on order by Union Pacific Railroad suitable for movement of new automobiles, trucks and buses as of November 9, 1956 and shows that the Union Pacific on that date owned 5,877 cars and had 500 cars on order

to be built in Union Pacific Shops December 1956 through April 1957 suitable for handling of involved traffic.

Part C of the exhibit consists of a list of open and [fol. 561] prepay stations of the Union Pacific in the involved states. Stations marked with an asterisk are non-agency stations. All other stations are agency stations.

Part D of the exhibit consists of a list of stations of the Union Pacific in the involved states having facilities for unloading automobiles, trucks and buses and it indicates side or end loading and car capacity.

Page 1 of Part E consists of published freight train schedules from Ogden, Utah to Provo, Utah. Page 2 consists of published schedules from Los Angeles, California to principal points on the Union Pacific in the involved states. Page 3 consists of published schedules from Wells, Nevada to principal points on the Union Pacific in the involved states. Page 4 consists of published schedules from Portland, Oregon to principal points on the Union Pacific between Portland, Oregon and Seattle, Washington and page 5 consists of published schedules from Portland, Oregon to principal points east of the Union Pacific in the states of Oregon, Washington and Idaho. Another witness will testify in detail with respect to these schedules.

Part F of the exhibit consists of a 2. page statement showing transit time during one week period of shipments of involved traffic originating in California to points in destination states involved. It indicates car initial and number, point of origin, billing date, destination, routing, time, place and date received from connecting carrier, time and date departed from point of receipt, time and date [fol. 562] placed at Union Pacific destination or place, time and date delivered to connecting carrier for off line destinations.

[fol. 563] Mr. Burchell: I have no further questions.

[fol. 564]

OFFERS IN EVIDENCE

I offer Exhibits 60 and 61.

Mr. Johnson: I have no objection to Exhibit 60, subject to our stipulation.

I do object to Exhibit 61 as being entirely irrelevant and burdening the record. I don't think that pictures of PFE ice docks, refrigerator equipment, and other facilities in the eastern part of the country, are at all material. I think it is desirable to keep a record of this sort within some reasonable bounds.

Mr. Burchell: The purpose of the exhibit, as stated in the testimony of the witness, is to show the facilities which the Union Pacific is required to maintain for the transportation of general freight and of passengers of all types. I submit it is very material. This application involves the question of public interest.

Exam. Linn: The objection is overruled.

Exhibits 60 and 61 are received in evidence.

(Protestant's Exhibits Nos. 60 and 61, Witness Shumway, were received in evidence.)

[fol. 565]

Cross examination.

By Mr. Johnson:

Q. Now, on your exhibit showing Union Pacific ownership of freight cars loaded with automobile loading devices, in what service do you normally use those cars?

A. Are you talking about Part "J"—which exhibit are you referring to?

Q. You do own a number of freight cars that are equipped with loading devices?

A. Part "J" shows the Union Pacific owns 1376.

Q. Now, normally where do you use those cars?

A. We use them in the automobile loading territories, used at all points where we have the loading of automobiles that requires that type of equipment.

Q. Where are those points?

A. They are at numerous points. You mean in this particular territory?

Q. I mean where you use these cars.

A. We use them at all assembly plants in the United States where they may be spotted for loading; where required.

Q. Assembly plants served by the Union Pacific?

A. Sometimes they are used on other lines.

Q. What plants do you serve?

A. Well, we serve a lot of them.

Q. What are they?

A. Well, we serve the BOP at Kansas City for one. We furnish them a lot of cars.

[fol. 566] Q. What other plants do you serve?

A. I can't recall right now just where they all are.

Q. How many cars have you provided for this BOP movement in California?

A. I have no records with me on that. It is substantial.

Q. You made the statement in your direct testimony, "However, we do on occasion when requested, furnish the Southern Pacific automobile cars for movement to South Gate for loading." You don't have any figures with you on that?

A. Yes. I can tell you that on August 10, 1956 they called upon us for help and we gave them 26 on this one day. On October 3, 1956, they called for help and we gave them 54.

Mr. Burchell: At South Gate?

The Witness: Yes, at South Gate.

On October 8, 1956, we gave them 40, and on November 15 we gave them 12.

That is representative.

By Mr. Johnson:

Q. You don't have any cars regularly assigned to that service, do you?

A. No; that is, serving the Southern Pacific.

[fol. 567] L. C. CHAMBERLIN was sworn and testified as follows:

Direct examination.

By Mr. Burchell:

Q. Will you state your name and address, please?

A. L. C. Chamberlin, 1416 Dodge, Omaha, Nebraska.

Q. By whom are you employed and in what capacity?

[fol. 568] A. Union Pacific Railroad, Auditor of Freight Accounts.

Q. How long have you held that position?

A. Since May 1, 1954.

Q. How long have you been employed by the Union Pacific?

A. Approximately 32 years.

Q. Has most of that experience been in the Accounting Department?

A. It has all been in the Accounting Department.

Q. What positions have you held prior to your present position?

Mr. Johnson: I am willing to admit his qualifications.

Mr. Burchell: Thank you. I will withdraw the question.

By Mr. Burchell:

Q. Have you prepared certain exhibits for presentation in this proceeding?

A. Yes, sir.

Q. Were these exhibits prepared by you or under your supervision?

A. Yes, sir.

Mr. Burchell: Mr. Examiner, I ask that there be marked for identification, as the next exhibit in order, a one-page document entitled in part, "Volume of Traffic of New Automobiles, Trucks and Buses Originated in California and Terminated on the Union Pacific in Specified States During the Period September 1, 1955 Through August 31, 1956." That will be Exhibit 62.

As Exhibit 63, a one-page document entitled "Volume of Traffic of New Automobiles, Trucks and Buses Orig-

inated in California and Delivered to Connecting Carriers During the Periods September 1, 1955 Through August 31, 1956."

[fol. 569] And as Exhibit 64 for identification a one-page document entitled "Average Revenue Per Ton on Automobile Traffic (Freight and Passenger) Originated in California Compared with Average Revenue for Indicated Commodity Groups For the Period September 1, 1955 Through August 31, 1956."

Next, as Exhibit 65 for identification, a one-page document showing loss and damage claims paid compared to gross freight revenue.

Exam. Linn: The documents may be marked in the order indicated.

(Protestant's Exhibits Nos. 62, 63, 64 and 65, Witness Chamberlin, were marked for identification.)

By Mr. Burchell:

Q. Will you refer to what has been identified as Exhibit No. 62, entitled "Volume of Traffic of New Automobiles . . . Originating in California on the Union Pacific In Specified States," and state what record that was prepared from?

A. That was prepared from the underlying detail for Schedule 941 of the Annual Report to the various State Commissions. It includes the original waybills, both our local and interline received waybills.

Q. Was that prepared in your office?

A. Yes, sir. The details were prepared in my office and transmitted to the General Auditor's Office for consolidation.

Q. Will you refer to Exhibit 63 and state how that was prepared—was that from the same records?

[fol. 570] A. Exhibit 63 was prepared from the interline copies of waybills, which are the underlying detail for Schedule 941 of the Annual Report to the various State Commissions, and our Form 922, which are the Agent's report on the waybills delivered to connecting carriers, and Underlying Detail for Schedule 941 of the report to the Interstate Commerce Commission.

Mr. Frizzell: What exhibit are you referring to?

Mr. Burchell: Exhibit No. 63.

By Mr. Burchell:

Q. Had you completed your answer?

A. Yes.

Q. Will you refer to what has been identified as Exhibit 64 and entitled, "Average Revenue Per Ton on Automobile Traffic." Was that prepared under your supervision?

A. Yes.

Q. And referring to Exhibit 65, showing loss and damage claims paid compared to gross freight revenue, was that prepared under your supervision?

A. Yes, in conjunction with information received from our General Claims Agent.

Q. Why were the commodities under lines 3, 4, 5, 6 and 7 included in this exhibit?

A. Because the loss and damage claims paid out, as compiled in the General Claims Department under Claim Commodity Classification 26, include those six commodity classifications.

Q. That would show the loss on those, as well as automobiles?

[fol. 571] A. Yes. There is no segregation for automobiles, passenger or freight separately.

Q. This average under line 9, average amount of claims paid per car, is on all of those commodities?

A. Yes, sir.

OFFERS IN EVIDENCE

Mr. Burchell: I offer Exhibits 62 through 65, and tender the witness for cross-examination.

Mr. Johnson: No objection.

Exam. Linn: Exhibits 62 through 65 inclusive are received in evidence.

(Protestant's Exhibits Nos. 62, 63, 64 and 65, Witness Chamberlin, were received in evidence.)

[fol. 572] C. C. WEEDIN was sworn and testified as follows:

Direct examination.

Mr. Burchell: I have distributed a statement of the witness, Weedin, and one exhibit. May the exhibit be marked for identification?

Exam. Linn: Exhibit 66 for identification.

(Protestant's Exhibit No. 66, Witness Weedin, was marked for identification.)

By Mr. Burchell:

Q. Will you state your name and address, please?

[fol. 573] A. C. C. Weedin, 1416 Dodge Street, Omaha, Nebraska.

Q. By whom are you employed and in what capacity?

A. Union Pacific Railroad Company as General Freight Service Manager.

[fol. 574] Cross examination.

[fol. 575] By Mr. Johnson:

Q. If that so-called joint arrangement that you suggested had proven feasible and been accepted, would you have any objection to this application?

A. We didn't conclude that it was feasible, but we proposed that it be studied with the thought that if it was found to be desirable and necessary to maintain the traffic interests, we would have gone along with it, at least I would have recommended it.

Q. The essence of your testimony, Mr. Weedin, as I follow it, is that the Union Pacific has been encountering truck competition in recent years?

A. Yes.

Q. And that you have lost some traffic to the trucks, that is true, isn't it?

A. Yes.

Q. The Union Pacific is not unique in this respect, is it, I mean in the railroad family?

A. I don't understand.

Q. That has been true of the railroad industry generally, hasn't it?

A. Yes, that is right.

Q. And isn't it true that your company has resisted that trend in proceedings before the Interstate Commerce Commission and elsewhere without success?

A. We have made such efforts, and have seen the trend, yes.

[fol. 576] Q. Unfortunately there are lots of shippers that want truck service, isn't that a fact?

A. I think that is right.

Q. Now, I assume these studies you referred to have included the movement of automobile traffic. Has the trend we have been talking about, diversion to trucks, been experienced in the territory you serve out of Kansas City, let us say, with respect to automobiles, automobile traffic?

A. I believe the trend is similar there, yes.

Q. As a matter of fact, isn't it generally true throughout the country that the manufacturers of automobiles, for one reason or another, are using truckaway service to an increasing extent?

A. Many of them are, yes.

Q. Isn't that generally true?

A. I think it is true to say to an increasing extent, yes.

Q. Now, let us just take, for example, traffic originating in California and destined to Idaho, for example, which is served by the Union Pacific. Hasn't there been an increasing truckaway movement of Fords to Idaho from the Ford plant in California?

A. Yes, I think that is right.

Q. Isn't it true that General Motors competitors in California have this service available to them and are utilizing it?

A. I thought all such shippers had it available to them.

[fol. 577] Mr. Burchell: I will call Mr. Watson.

G. M. WATSON was sworn and testified as follows:

Direct examination.

Mr. Burchell: I have two exhibits I would ask to be identified.

Exam. Linn: They may be marked as Exhibits 67 and 68 for identification.

(Protestant's Exhibits Nos. 67 and 68, Witness Watson, were marked for identification.)

[fol. 578] By Mr. Burchell:

Q. Will you state your name and address, please?

A. My name is G. M. Watson. By business address is 1416 Dodge Street, Omaha, Nebraska.

Q. By whom are you employed and in what capacity?

A. I am Assistant Freight Traffic Manager of the Union Pacific Railroad Company at Omaha.

[fol. 579] Cross examination.

By Mr. Johnson:

Q. Turning to your Exhibit 67, the first page, as I follow the exhibit it shows an increased number of automobiles, let us say, in the state of Idaho over a period of years since 1929, for instance 1955, and also that during that period the number of automobile ownerships had gone up. The number of automobiles, however, that the Union Pacific has terminated has actually gone down.

A. That is correct.

[fol. 580] Q. What is your interpretation of that?

A. Well, the only interpretation that I can make from that is that other forms of transportation are being used to transport the automobiles.

Q. That would include truckaway, wouldn't it?

A. Right.

Q. If we deal with Idaho, we know, don't we, that no General Motors units have moved into that state by other than rail from California?

A. I don't know that.

Q. Do you know of any truckaway of General Motors products?

A. No.

Q. Do you know whether or not Ford and Chrysler are using truckaway to Idaho?

A. I have heard that stated, but I don't know that of my own knowledge.

Q. You have simply made this tabulation for competitive purposes?

A. That is right.

Q. And your general interpretation of all the pages of the exhibit is that it does reflect a diversion from rail to other forms of transportation?

A. That is right.

Mr. Johnson: That is all I have.

Exam. Linn: Is Exhibit 67 limited to traffic from California origins, or from origins throughout the United States?

[fol. 581] The Witness: From all origins in the United States terminated in the various states.

Exam. Linn: Any redirect?

Mr. Burchell: No.

Exam. Linn: That is all. Thank you.

(Witness excused.)

Mr. Burchell: The exhibits were received?

Exam. Linn: They were received, yes.

Mr. Farrell: I will call Mr. Marty as the next witness.

A. H. MARTY was sworn and testified as follows:

Direct examination.

Mr. Farrell: Could we have the exhibits marked, Mr. Examiner?

Exam. Linn: You indicate the order in which they are to be marked.

Mr. Farrell: The first one will be the map, Exhibit 70. The second one is the document showing the auto unloading facilities, which would be Exhibit 71.

Third is the freight train schedules in Montana, Idaho, Washington and Oregon, Exhibit 72.

The next one, time and transit study, Exhibit 73.

Exam. Linn: The documents may be so marked.

(Protestant's Exhibits Nos. 70, 71, 72 and 73, Witness Marty, were marked for identification.)

By Mr. Farrell:

Q. Will you state your full name?

{fol. 582} A. A. H. Marty.

Q. What is your address, Mr. Marty?

A. 176 East Fifth Street, St. Paul, Minnesota.

Q. By whom are you employed?

A. Northern Pacific Railway.

Q. In what position?

A. General Car Service Agent.

Q. What has been your experience?

A. I have worked as General Car Service Agent for the last five years. Prior to that I had ten years as a Travelling Car Service Agent. Prior to that, back as far as 1915, I was working on various positions in the Operating Department.

Q. What are your present duties as General Car Service Agent?

A. My present duties have to do with car allocation, service orders, and so forth, in connection with transportation.

Q. Turning now to Exhibit No. 70, will you identify that, please?

A. That is a map of the Northern Pacific Railway on which I have circled in red the interchange points in connection with this case, like Portland with the Southern Pacific and SP&S; at Pasco with the SP&S; at Spokane with the SP&S; and at Butte with the Union Pacific.

Q. Those are the points of interchange which would be involved in connection with this application?

A. That is right.

[fol. 583]

OFFERS IN EVIDENCE

We offer in evidence Exhibits 70 through 73 inclusive.
Exam. Linn: They will be received in evidence.

(Protestant's Exhibits Nos. 70 to 73 inclusive, Witness Marty, were received in evidence.)

[fol. 584]

Recross examination.

By Mr. Johnson:

Q. As long as you are talking about cars, are there any Northern Pacific cars which were used in the movement shown on this exhibit?

A. Not a one.

Q. Do you own any automobile cars?

A. We own 94 auto rack cars, 40 foot; Evans auto rack cars, 94 of them, 40 foot.

Q. Where do you use those cars?

A. Well, they are used on the east end where we get a [fol. 585] few loads coming out of the head of the Lakes, shipped by boat, moving into Montana and various points. Also we have requests every now and then for loading at Detroit, Michigan on the Grand Trunk Western. As a rule, however, there isn't much demand for the 94 cars that we own, which go into plywood loads, or whatever loading we can get.

Q. Are they all 40 foot cars?

A. Right, 40 foot; 10 foot wide.

Q. Shippers like a bigger car?

A. That is right.

Q. Referring to your Exhibit 73, is that a complete list of automobile shipments during that period from California?

A. Correct.

Q. And to—

A. To points on our line.

Mr. Farrell: Terminated by us?

The Witness: Yes.

Mr. Johnson: That is all.

Further redirect examination.

By Mr. Farrell:

Q. Has the Southern Pacific requested us to provide any cars to service their accounts in California?

A. Not to my knowledge.

Mr. Johnson: Would you know—you are not in the operating department, are you?

The Witness: Yes, 41 years in the operation.

[fol. 586] By Mr. Farrell:

Q. Do we furnish cars to our shippers on shipments originating in the Pacific Northwest and moving into California?

A. Yes.

Q. Whose cars are those?

A. Our equipment and other equipment that we receive.

Mr. Farrell: Nothing further.

Mr. Johnson: Nothing further.

Exam. Linn: You are excused.

(Witness excused.)

Mr. Farrell: I will call Mr. Jackson.

FRANK W. JACKSON was sworn and testified as follows:

Direct examination.

Mr. Farrell: May we start out by marking these exhibits.

The 1-page sheet, showing the number of miles of railroad by states will be Exhibit 74.

The next one, consisting of 15 pages, showing the agency and non-agency stations, will be Exhibit 75.

Next, a document showing the revenue by commodity, for 19 commodities will be Exhibit 76.

The one sheet showing carloads of automobiles will be Exhibit 77.

Next, the sheet showing system average revenues, will be Exhibit 78.

[fol. 587.] The sheet showing cost of major improvements to the System, will be Exhibit 79.

The estimated cost of major improvements for 1956 and 1957, will be Exhibit No. 80.

The document showing the motive power will be Exhibit 81.

The operating revenues, will be Exhibit 82.

The average revenues by major commodity groups will be Exhibit 83.

Exam. Linn: The documents may be marked for identification in the manner indicated.

(Protestant's Exhibits Nos. 74 to 83 inclusive, Witness Jackson, were marked for identification.)

By Mr. Farrell:

Q. State your full name and business address.

A. Frank W. Jackson, Northern Pacific Building, St. Paul 1, Minnesota.

Q. What is your position?

A. Assistant Statistician.

Q. How many years have you been employed by the Northern Pacific?

A. About 38 years.

[fol. 588]

OFFERS IN EVIDENCE

Mr. Farrell: We offer Exhibits 74 through 83 inclusive in evidence and tender the witness for cross-examination.

Mr. Johnson: No objection.

Exam. Linn: Exhibits 74 to 83 inclusive are received in evidence.

(Protestant's Exhibits Nos. 74 to 83 inclusive, Witness Jackson, were received in evidence.)

[fol. 589] C. E. FULTON was sworn and testified as follows:

Direct examination.

By Mr. Farrell:

Q. State your name and address, please.

A. C. E. Fulton, 200 Smith Tower, Seattle, Washington.

Q. What is your position, Mr. Fulton?

A. Assistant Western Freight Traffic Manager.

Q. For what company?

A. Northern Pacific Railway.

[fol. 590] During the past 25 years the rail lines have experienced increasingly severe competition from other forms of transportation and the Northern Pacific has been no exception. For example, in 1939 the rail lines transported 62.4 percent of the intercity ton miles of freight, while in 1955 this dropped to 49.4 percent.

The Northern Pacific is well aware of the changing trends in transportation, such as faster transit time, special equipment, mechanical refrigeration, store-door delivery, etc. To speed up our transit time we have spent large sums of money in elimination of curves, improving roadbeds and recently completed the only electronic retarder yard in the Pacific Northwest at Pasco, Washington. These improvements and the purchase of diesel locomotives have enabled us to speed up our freight trains to the point where they operate on practically passenger train schedules. We have also built special equipment for handling commodities manufactured by the Atomic Energy Commission at Richland, Washington, the Boeing Airplane Company at Seattle, Washington, and others. We are also expanding our fleet of mechanical refrigerator cars, DF cars, covered hopper cars, [fol. 591] and other special purpose cars to provide our shippers with the finest possible service. We recognize that in the Pacific Northwest there are a few small communities not directly served by rail and to serve these communities we just recently supported the application of Transport Storage and Distributing Company of Seattle in Docket

MC-108121 which seeks authority to transport automobiles in connection with prior rail movement.

The mileage from California to the North Pacific Coast ranges from 900 to 1400 miles and—

Mr. Johnson: I object to the balance of that page on the ground that it states conclusions on the part of the witness.

Mr. Farrell: I think, Mr. Examiner, that the statement which the witness makes is factual and admissible in this proceeding. This man is an expert witness, traffic manager for one of the large transcontinental railroads involved in this case as a protestant. I think his opinion is of merit and I think he has a right to express it.

Exam. Linn: The witness may continue his statement over the objection.

The objection is overruled.

A. (Reading) The mileage from California to the North Pacific Coast ranges from 900 to 1400 miles and hauls of this length are ideally suited for rail movement. By combining the advantages of rail and Transport Storage and Distributing Company services, we are in the position to provide the very best service to communities not served [fol. 592] by rail and also provide store-door delivery.

[fol. 593] J. E. PETERSON was sworn and testified as follows:

Direct examination.

Mr. Cronon: May we mark the exhibits, Mr. Examiner?

Exam. Linn: Yes, beginning with 84.

Mr. Cronon: Exhibit 84 will be the map.

Exhibit 85, a list of stations.

Exhibit 86, the freight train schedule.

Exhibit 87, the performance record.

Exam. Linn: The exhibits may be marked in the manner [fol. 594] indicated.

(Protestant's Exhibits Nos. 84, 85, 86 and 87, Witness Peterson, were marked for identification.)

By Mr. Cronon:

Q. Would you state your name?

A. J. E. Peterson.

Q. What is your business address?

A. 175 East Fourth Street, St. Paul, Minnesota.

Q. By whom are you employed and in what capacity?

A. By the Great Northern Railway, as Staff Assistant to the General Superintendent of Transportation.

Q. What are your duties?

A. My duties consist of preparing exhibits and appearing in Interstate Commerce Commission hearings, and I am in charge of the Time Freight Section of the Transportation Department, which has to do with the performance of time freights, and tracing shipments, diversion of shipments, and so forth.

Q. In other words, your job is to keep tab on freight traffic performance on the Great Northern System?

A. That is right, sir.

Q. You have with you some exhibits, Mr. Peterson. Are they the ones marked 84 to 87 inclusive?

A. Right.

Q. What is Exhibit 84?

A. Exhibit 84 is a map of the United States on which the territory served by the Great Northern Railway is shown in heavy red lines from St. Paul to the West Coast. On [fol. 595] this map I have also circled the principal interchange points for traffic originating in California destined to points in the state of Montana and west.

Q. The Great Northern line in the State of California terminates at Bieber, is that correct?

A. That is right.

Q. And at that point does it connect with another railroad?

A. With the Western Pacific.

Q. On traffic going into the Bay area?

A. Yes, sir.

Q. Does it also have a hook-up with the Western Pacific and the Santa Fe on traffic going into Southern California?

A. It does.

Q. And into the Los Angeles area?

A. Yes.

Q. Which would include the vicinity of the General Motors plants in Southern California?

A. Yes, sir.

Q. What is Exhibit No. 85?

A. Exhibit No. 85 is a list of stations with unloading platforms for unloading autos and trucks in the states of Oregon, Washington, Idaho and Montana.

Q. You don't know whether or not General Motors has dealers at those particular stations?

A. No, I don't.

[fol. 596] Q. If they have they can get their cars unloaded there, however, can't they?

A. Yes, sir.

Q. What is Exhibit No. 86?

A. Exhibit No. 86 shows the freight train schedules on the Atchison, Topeka & Santa Fe Railway, the Western Pacific Railway, and the Great Northern Railway, from Los Angeles and Oakland, California, and on the Great Northern Railway from Portland, Oregon to the principal cities in the states of Oregon, Washington, Idaho and Montana.

Q. The last four states mentioned are those in which the Great Northern is affected by this application?

A. Yes, sir.

Q. Is the purpose of Exhibit 86 to show the so-called published schedules?

A. That is right.

Q. What is Exhibit No. 87?

A. Exhibit No. 87 is the performance record of representative Great Northern freight trains during the period January 1 to 15 inclusive, 1957.

Q. I guess your exhibit is keyed to show what the symbols "A" and "L" mean?

A. Yes.

Q. So it is self-explanatory, I believe.

A. Yes.

[fol. 597] Q. The performance record, Exhibit 87, shows operations on the Great Northern lines only, is that correct?

A. That is right.

Q. Will you tell us, Mr. Peterson, what the over-all on-time performance record of the Great Northern has been for any recent period?

A. Well, we recently checked into this and we have about 93 percent on-time performance.

Q. Does the Great Northern originate any automobile traffic at assembly plants on its line?

A. No, sir.

Q. Does it originate some traffic on ex-Lake shipments at Duluth and Superior?

A. Yes, sir.

Q. During the season of Great Lakes shipping does the Great Northern furnish so-called automobile or Evans loader cars at the head of the Lakes?

A. We do.

Q. If called upon by another railroad is it the practice of the Great Northern to furnish any of its available Evans loader cars for use on other lines?

A. Yes, we do so.

OFFERS IN EVIDENCE

Mr. Cronon: I offer Exhibits 84 through 87.

Exam. Linn: They are received.

(Protestant's Exhibits Nos. 84, 85, 86 and 87, Witness Peterson, were received in evidence.)

[fol. 598]. Mr. Cronon: That is all I have on direct.

Cross examination.

By Mr. Johnson:

Q. Do I understand that in time of emergency, or car shortages, you do make cars available to assist in the loadings of this character by other railroads?

A. Yes, sir.

Q. Do you assign any cars permanently for the handling of traffic of that character?

A. You mean to other railroads?

Q. Yes.

A. No.

Mr. Johnson: That is all I have.

Mr. Cronon: That is all.

Exam. Linn: That is all. You may be excused.

(Witness excused.)

Mr. Cronon: Mr. VanZinderen, please.

L. L. VAN ZINDEREN was sworn and testified as follows:

Direct examination.

Mr. Cronon: May we have the bound document marked Exhibit No. 88, please?

Exam. Linn: It may be so marked.

(Protestant's Exhibit No. 88, Witness VanZinderen, was marked for identification.)

By Mr. Cronon:

Q. Will you state your name and spell it?

[fol. 599] A. L. L. Van Zinderen—V-a-n-Z-i-n-d-e-r-e-n.

Q. What is your business address?

A. Room 825, Great Northern Building, St. Paul, Minnesota.

Q. By whom are you employed?

A. The Great Northern Railway Company.

Q. In what capacity?

A. Statistician, Cost and Statistical Vice President in the Comptroller's Office.

Q. Did you have prepared under your direction, or partially by yourself, the exhibit which has been marked No. 88 for identification?

A. I did.

[fol. 600] Q. The Schedule "L"?

[fol. 601] A. Schedule "L" shows the cars in tons and the Great Northern revenue from freight and passenger automobiles handled from origins in California and either terminated by the Great Northern or handled by the Great Northern as a bridge carrier in the various states as indicated.

Line 19 shows the total number of cars, and this covers the entire year 1955, 9989 cars, the Great Northern proportion of revenue being \$1,287,308.

Q. Have you made any computation of the percentage that Great Northern revenue on California origins of automobiles bears to gross freight revenue of the Great Northern on passenger automobiles?

A. On passenger automobiles?

Q. Yes.

A. Yes. 38 percent.

Q. Schedule "M" is the time in transit study.

A. It is.

Q. It seems to be similar to the others. Is there anything different about it as far as you know?

A. No, there is not.

OFFER IN EVIDENCE

Mr. Cronon: I offer Exhibit 88 in evidence and that completes my direct examination.

Mr. Johnson: No objection.

Exam. Linn: Exhibit 88 for identification is received in evidence.

[fol. 602] Exam. Linn: On the record.

EDWARD W. BERGSTROM was sworn and testified as follows:

Direct examination.

By Mr. Cronon:

Q. Will you state your name?

A. My name is Edward W. Bergstrom.

Q. What is your business address?

A. 175 East Fourth Street, St. Paul, Minnesota.

Q. By whom are you employed?

A. By the Great Northern Railway.

Q. In what capacity?

A. Assistant general freight traffic manager.

[fol. 603] Q. Were you in on discussions with officials of the Great Northern Freight Traffic Department with respect to a proposal whereby Southern Pacific and Great Northern and other railroads were considering filing common carrier applications with the Interstate Commerce Commission, looking forward to performing a joint service, that is, joint service as far as equipment and rates are concerned, on automobile traffic for General Motors from [fol. 604] California origin points, particularly the points on the Great Northern Railway?

A. I was in on such discussion.

Q. Did you understand in those discussions what the particular proposal was?

A. Yes, sir.

Q. Will you give us an answer—

Mr. Johnson: Just a moment. Did you participate in any discussion with Southern Pacific representatives?

The Witness: I participated in discussions with the Great Northern people.

Mr. Johnson: But not with the Southern Pacific?

The Witness: No. My discussion was with our own officer.

Mr. Cronon: I am just asking what the Great Northern proposal was.

By Mr. Cronon:

Q. What was the setup?

A. As I understood, the proposal initially was to join with the Southern Pacific in providing joint motor carrier service under common carrier rates to points served by the Great Northern Railway, the Great Northern to participate in the traffic from its connections with the Southern Pacific.

Q. Did that proposal ever reach any point where the facts were definitely determined as to what was going to be done, or was it more of a preliminary discussion?

A. It was a preliminary discussion. We went so far as [fol. 605] to contemplate methods that could be worked out on an interchange of equipment, interchange of drivers, but before we could conclude anything, it was determined

that General Motors were not interested in a joint operation.

Q. How did you get that information?

A. I was so advised by our vice-president.

Q. Do you know where he got his information?

A. I understand it was by conversations and correspondence with the Southern Pacific.

Q. With a traffic official of like standing of Mr. Finley?

A. Yes.

Q. Who would that be?

A. Mr. Peoples.

Q. Now, why was the Great Northern interested in entering into a joint operation like that when it knew that Pacific Motor Trucking Company was considering filing a contract carrier application which would extend its operations into Great Northern territory? Why were we interested in a joint operation?

A. We were only interested in a joint operation as a means of survival. Obviously if the traffic is going to be taken away from us, we have got to do something to protect ourselves. If we are forced into that type of business, we think our only solution is to join in the operation to protect our revenue. We can't stand that loss of money.

Q. Now, after the so-called joint proposal came to an end [fol. 606] and it was given up for the reasons you have just stated, did the Great Northern, along with other railroads in the North Pacific Coast area, consider and enter into any other trucking arrangements?

A. Yes, we did.

Q. What was that?

A. We worked with a firm called Transport Storage and Distributing Company of Seattle on a proposal to rail automobiles to distributing points; namely, Portland, Seattle, Tacoma, Wenatchee, Spokane, and Kennewick, Washington, with the Transport Company who were then handling the cars from the rail distributing point and making dealer distribution within a short destination radius.

Q. What was the purpose behind the railroads working out an arrangement with Transport Storage?

A. Preservation of revenue; preserve our rail revenue.

[fol. 607]

Cross examination.

By Mr. Johnson:

Q. Mr. Bergstrom, you referred to your opposition in this proceeding as involving a matter of survival to your company. Do you recall that language.

A. Yes, sir.

Q. Now, when you make that statement, I assume you are referring to a loss of money due to potential diversion of traffic; is that right?

A. Yes, sir.

Q. Are you familiar with Exhibit 88 showing the amount of revenue involved?

A. Yes, sir.

[fol. 608] Q. Now, you mentioned in your testimony that it has been your experience from assembly plants in Minnesota and other eastern states that there has been an increase in movement of automobiles in truckaway service?

A. Yes, sir.

Q. What are these assembly plants in Minnesota? Who owns them?

A. The one—there is only one assembly plant in Minnesota. It is owned by Ford Motor Company.

Q. Is Ford Motor Company distributing a great volume?

A. Yes, sir.

Q. Is it generally true, according to your experience and study of this subject, that General Motors competitors have truckaway service available to them and use it?

A. I would say all automobile manufacturers have the service.

Q. And are using it and to an increasing extent; is that right?

[fol. 609] A. Yes, sir. That's why we can't stand this constant erosion of traffic. Some place it's got to stop.

Q. You think it ought to be stopped in California?

A. I thought it should have been stopped before it started, but I think it should be stopped now too.

[fol. 610] Q. Now, on your transport storage plan, when was that application filed?

A. The date the application was filed?

Q. Yes, roughly.

A. I can get that.

[fol. 611] Q. We can move on to something else. Would that have been within the last four or five months?

A. Yes, sir.

Q. That is all I really care about.

A. What do you—here is the date of it. It was October 10, 1956.

Q. Has there been a hearing in that case?

A. Yes, sir. The hearing was concluded in Seattle.

Q. When was it concluded?

A. Held in Seattle on January 28 and 29, 1957; still awaiting a decision.

Q. What is your plan with respect to that operation? Do you contemplate publishing joint rates?

A. Joint rates?

Q. Yes.

A. We probably—we have an application filed right now that is on the joint docket of the North Pacific Coast Freight Bureau on the Pacific South Coast Freight Bureau on Docket No. JT 3694 amended. The date of the docket is January 4, 1957.

Q. Does that contemplate joint rates?

A. Yes, sir; through rate.

Q. From the assembly plant to dealer location?

A. Final destination, yes, sir.

Q. Now, what are you going to do about off rail points?

A. Off rail points?

[fol. 612] Q. Yes.

A. The few off rail points we have could be served by the motor carrier serving the destination area, assuming there is a highway there.

Q. Yes, assuming that, and that is a pretty reasonable assumption.

Now, under that type of arrangement, the traffic would move, let's say, to Seattle?

A. Yes, sir.

Q. By rail, and be unloaded there?

Q. A. Unloaded by the Transport Company, yes, sir.

Q. And then reloaded?

A. On to—

Q. On to the truckaway?

A. Yes, sir.

Q. Have you made any study of transit time?

A. With the operation?

Q. Yes.

A. The transport people tell us that from the distributing points they can make delivery at any destination in the area on the same day that they reload.

[fol. 613] T. R. THOMAS was sworn and testified as follows:

Direct examination.

By Mr. Earp:

Q. Will you state your name, please?

A. T. R. Thomas.

Q. By whom are you employed?

[fol. 614] A. I am employed by the Transport Storage and Distributing Company.

Q. Where is Transport Storage and Distributing Company located?

A. The main office is 74 Jackson, Seattle, Washington.

Q. What is your position?

A. I am general manager at Transport.

Q. Now, can you state what your duties are in your position as general manager of that company?

A. Yes. I am personally accountable to Mr. R. J. Tarte, president, for all phases of the business, including personnel and equipment.

Q. Do your duties include the supervision and handling of all claims, the making of all rates for the company and other matters of that nature?

A. Yes, it does.

Q. Are you generally familiar with the accounts and financial records of that company as well?

A. Yes, I am.

Q. Now, what is the general nature of the business of Transport Storage and Distributing Company?

A. Transport Storage and Distributing Company are terminal operators. We receive on the various auditings of the railroads automobiles in rail shipments. We unload the automobiles and perform—provide warehouse facilities, complete servicing, whatever the dealer may require to [fol. 615] the automobile, from smaller servicing such as making it ready to drive over the roads or for the customer to come in and pick it up himself, or even to the point of undersealing and porcelainizing and polishing and other types of services.

We also receive yard shipments from Transcontinental Truckers from all the various truck lines. Also we receive and duly pick up and process cars coming in import off of the docks. Basically, generally speaking, that is pretty much the scope of our operation.

Q. Do you also perform over-the-road transportation of automobiles and automobile transporter equipment?

A. Yes, we do. We have complete service in the state of Washington from Seattle.

Q. Are you also agent for dealers and others on automobile traffic to Alaska?

A. Yes, I am personal agent for all the General Motors dealers in Alaska.

Q. When was Transport Storage and Distributing Company started? When did they start in business?

A. July 11, 1931.

Q. Have you operated continuously in the ways that you have outlined since that time?

A. Yes.

Q. Is Transport Storage and Distributing Company a corporation?

A. Yes. It is a corporation, a sole owned corporation. [fol. 616] The stock is owned exclusively by Mr. Tarte and his son, Neil.

Mr. Earp: Mr. Examiner, may we mark these for identification, now, please?

Exam. Linn: The Operating Authority of Transport Storage and Distributing Company will be marked Exhibit 93, the Intrastate Operating Authority will be marked as 94; the equipment list, 95; and the statement of operations, 96.

(Protestant's Exhibits Nos. 93 through 96, Witness Thomas, were marked for identification.)

By Mr. Earp:

Q. Do you have in front of you what has been marked for identification as Exhibit No. 93, reading "Operating Authority of Transport Storage and Distributing Company"?

A. Yes.

Q. Is that a true and correct copy of the interstate commerce certificate of Transport Storage and Distributing Company?

A. It is.

Exam. Linn: Is there any objection to the exhibits?

Mr. Johnson: No objection.

Exam. Linn: The exhibits were prepared by you or under your direction?

The Witness: That's correct.

Exam. Linn: They may be received, counsel, unless the witness desires to comment specially about one of them.

[fol. 617] **Q.** Do you know long Transport Storage and Distributing Company has been so serving the General Motors Corporation?

A. Transport Storage and Distributing Company has been serving General Motors for 25 years. In fact, we are very proud of the plaque that we got last year from them.

Q. Now, the services that are performed of Buick-Oldsmobile-Pontiac Division, can you state whether or not they are performed under a contract and with whom that contract is negotiated?

A. Yes. We do—as I previously stated, we work directly for Buick-Oldsmobile-Pontiac separately, not as an over-all BOP. The contract is negotiated with us yearly by

Argonaut Realty Company, who is the branch of General Motors.

[fol. 618] Q. Are you paid for your services by the Argonaut Realty Company?

A. Yes. We bill Pontiac, Buick and Olds separately. The bills are transmitted to Portland, okayed by the various divisions, forwarded on to Argonaut Realty, and we receive separate checks from Argonaut Realty for each of our charges to the three divisions on a monthly basis.

Q. Do you know how long such arrangements have been in effect?

A. Those arrangements have been in effect, to my personal knowledge, for the last six and a half years that I know of, and I understand for many years prior to my association with Transport Storage.

Q. Does your contract with Argonaut Realty call for any minimum number of cars for which you must provide warehouse service?

A. Yes. We must provide a minimum in our contract for space for 100 either Buick, Olds or Pontiac, or any combination of numbers thereby.

Q. Can you state, Mr. Thomas, based on your experience, the number of cars that you usually have in storage per Buick-Cadillac-Pontiac Division?

A. Yes. It varies with the year, the way the rest of production of automobile has done. The high, I would say, would be 300 Buick, Olds and Pontiacs, and the low would be 25 of each, which would be—we have never—very seldom less than 75 in the warehouse; 75 to—oh, possibly it might [fol. 619] go once or twice to 60. But normally speaking it is usually around 150 to 200.

Q. Now, can you state the number of cars that were received, handled by Transport Storage and Distributing Company for the years 1950 through 1956?

A. Yes. Do you want the number of all makes?

Q. All makes, yes.

A. 1950 was 27 thousand 19 hundred—correction, 27,919; '51 was 22,894. '52 was 17,103. '53 was 18,217. '54 was 12,860. '55 was 22,861. '56 was 17,580.

Q. Now, can you state the number of cars shipped to dealers in Alaska for the years 1952 through 1956 inclusive?

A. Yes. 1952 was 2,022. '53 was 1,808. '54 was 1,399; '55 was 1,954. '56 was 1,958.

Q. Now, Mr. Thomas, can you state the number of automobiles received by Transport Storage and Distributing Company handled by you for the years 1955 and 1956? I am talking about automobiles handled by rail, that came to you by rail.

A. Yes. In 1955 we handled 22,027 received exclusively by rail. In 1956 it was 15,039 by rail.

Q. Can you state the number of cars handled for those years from truck transporters?

A. Yes. In 1955 we received via truck transporters 659; in 1956, 1,765.

Q. Can you state the number of cars received for those years via steamship?

[fol. 620] A. In 1955 we received via steamship 175; in 1956, 1,756.

Q. In your years of experience with this company, Mr. Thomas, have you and do you today actually go down on the team tracks and supervise and work in the unloading of automobiles from rail cars?

A. Yes, I do.

Q. Based on that experience can you state what average time it requires for you to unload rail cars, for automobiles and rail cars?

A. Yes, sir. Depending on the make of car, they will run anywhere from 14 minutes up to 30 and 35 minutes.

Q. Do you also receive shipments at your terminals that come there by truck transporters?

A. Yes, we do.

Q. Have you had occasion to observe the transporter drivers unload their rigs with their cars?

A. Yes.

Q. Has that been frequent?

A. Yes. We have received daily shipments, and I spend a minimum of at least an hour and a half to two hours on our auditing personally.

Q. I am talking about the truck transporters now.

A. I understand. I am there when they come in.

Q. Based on that experience can you state what the length of time required to unload these truck transports is?

[fol. 621] A. Yes. It all depends, of course, on the type of equipment. With some of the longhaul carrier, hauling six units in a combination, it takes him usually a little bit longer than the—we do receive short haul movements from other companies in Seattle, trucking companies such as Convoy and that. They take much less time to unload; about the same time as ours.

The longhaul carriers will run from the time the cars are checked and unloaded and the driver has a signed receipt to go back, the run is—well, it will run a good hour and many times an hour and a half.

Q. Now, can you state, Mr. Thomas, if Transport Storage and Distributing Company has filed an application for an extension of services and authority with the Interstate Commerce Commission?

A. Yes, we have.

Q. Is that docketed as MC 108121, Sub No. 2?

A. It is.

Q. Was that matter heard in Seattle on January 28, and has the hearing been concluded?

A. Yes, the hearing has been concluded.

Mr. Earp: Mr. Examiner, I would request judicial notice be taken of the application of Transport Storage and Distributing Company.

Mr. Johnson: I would object to that. I don't think that is a proper subject of judicial notice.

Exam. Linn: Will it be satisfactory if the Commission [fol. 622] officially notices the decision that may be reached in that proceeding?

Mr. Earp: Yes, sir.

Exam. Linn: Ordinarily that is done as a matter of course, and it may be understood it will be done in this proceeding.

By Mr. Earp:

Q. Mr. Thomas, can you state briefly the authority that you sought in this application?

A. Yes. We applied for secondary rights only from seven—I believe it is seven from different terminals. I can name the terminals.

Q. Pardon me, they were the same terminals as named by Mr. Bergstrom in his earlier testimony?

A. Yes.

Q. And does the territory you contemplate serving include northern and eastern Oregon, all of the state of Washington, northern and western Idaho, and four counties in eastern Montana? Is that correct?

A. Yes, it does.

Q. Who supported your application at the hearing, Mr. Thomas?

A. We had three northern railroads: the Great Northern, the Northern Pacific and the Union Pacific, and the many dealers that we serve.

Q. Now, could you explain briefly the type of service that is contemplated by your company if the application is granted?

A. Yes. We have set up—

[fol. 623] Exam. Linn: I wonder if that isn't sufficient, that the decision ultimately issued be officially noticed.

Mr. Earp: Well, Mr. Examiner, we have a situation here in which this applicant, in order to remain in business, is attempting and trying his best to provide a service which the dealers want and need.

Mr. Handler: Do you mean applicant or protestant, counsel?

Mr. Earp: I beg your pardon?

Mr. Handler: You said "applicant." Do you mean "applicant" or "protestant"?

Mr. Earp: Which this protestant—yes. I beg your pardon. Thank you, Mr. Handler. —(continuing) which this protestant is doing in order to protect their business.

Exam. Linn: Will the witness go ahead briefly on the subject.

Mr. Earp: I think it is important because I think we can show here—

Exam. Linn: It is not important unless the Commission grants it. Then it may become important.

The Witness: Yes. We have set up the seven different terminals, and we never have our trucks more than 150 miles from one terminal point. This is predicated on re-

ceiving the cars to a one destination point, either by rail or truck or both.

Then the product is put on our truck and re-fanned out in load combinations to the various dealers, in effect giving [fol. 624] the so-called—what we refer to in the business as the door to door delivery program.

Exam. Linn: That service would be rendered to both rail and non-rail points?

The Witness: Yes. We service the general public, the whole works.

By Mr. Earp:

Q. Now, Mr. Thomas, have you participated in conferences with officials of the Great Northern, the Northern Pacific and the Union Pacific railroads regarding operations under either joint rate arrangements or as substituted service arrangements with these railroads if your application is granted?

A. Yes.

Q. Will you also serve the off-rail points?

A. We serve all points.

Q. Are you willing to work on either a combination of local rates independently or under either a joint or substituted arrangement?

A. Yes, no question about it. We just want to give the service to the dealers.

Q. Can you state what your transit times will be on these automobiles received by you after the car is spotted?

A. We—the cars received with us by noon, within the 24 hour period we will have the car delivered to the dealer's door. That is one of the main things that made us decide to limit our operation for never being more than 150 miles from one point, to send the truck out one morning and bring it back the same day.

[fol. 625] Q. Do you believe that that contributes to the overall efficiency of a truck operation?

A. I do in our particular case up there, yes.

Q. Now, Mr. Thomas, you have had a great deal of experience in receiving shipments of automobiles via rail from California, have you not?

A. Yes.

Q. Have you had occasion to observe the shipping time on the waybills of those automobiles?

A. Yes; we have more than the waybills. We, for example—

Exam. Linn: Isn't it already established by the rails themselves?

Mr. Earp: Mr. Examiner, I want to point out from this witness that, in his experience, the rails are actually making their advertised scheduled time here.

Exam. Linn: There is no question about the rail transit time as far as the record goes. It is adequately established.

Mr. Earp: All right, sir.

[fol. 626] Q. Based on the studies that you have made of this transportation problem prior to the filing of your application, can you state briefly the advantages that you believe are inherent in the Transport Storage and Distributing plan of distributing cars after a prior rail or truckaway movement versus other methods, Mr. Thomas?

Mr. Johnson: It seems to me that is a conclusion and is argumentative. I object on that ground.

Mr. Earp: Well, this witness has made a thorough study of this matter, Mr. Examiner.

Exam. Linn: Is there anything he hasn't said about it?

Mr. Earp: Yes, sir, there is.

Exam. Linn: I wonder if you could develop it by a specific question.

Mr. Earp: All right.

By Mr. Earp:

Q. Now, Mr. Thomas, you stated here briefly before that you perform pre-servicing of automobiles for some dealers and some fleet uses, did you not?

A. Yes.

Q. Will you state what that pre-servicing includes?

A. Yes. We have—

Exam. Linn: Haven't you already stated that, Witness?

Mr. Earp: No.

[fol. 627] The Witness: No. Just one point, if I can. I won't repeat what I have said before.

In fleet contracts—and I am speaking specifically now of Chevrolet—the Chevrolet dealers in our particular area, we have taken to the—as far as taken the unit from the box car to the complete servicing and all accessories that are to be installed and required and delivered right to their customer without that ever having the waste motion of unloading and taking it to their place and back. This was done upon the request of the Chevrolet on us ourselves, this additional service that we perform for them.

By Mr. Earp:

Q. Do you also perform this pre-servicing for dealers in your area now?

A. Yes. We are doing it to the four Buick dealers, the undersealing and porcelainizing and polishing and the complete get-ready, with the exception of mechanical.

Q. Based on your experience in this automobile transportation field, Mr. Thomas, is it your opinion—will you state whether or not it is your opinion that your plan is the only plan that will allow such pre-servicing of automobiles for dealers?

A. Yes. I believe in our area up there that that is the only way it will work.

Q. Now, Mr. Thomas, can you state whether or not in December of 1956 you had conferences with Mr. Lynch of Chevrolet and Mr. Barrett of the Buick-Oldsmobile-Pontiac [fol. 628] assembly division respecting your application and the services contemplated by you?

A. Yes. Mr. Tarte and myself both called them personally.

[fol. 629] Q. Now, Mr. Thomas, do you serve dealers selling other makes of automobiles besides General Motors?

A. Yes, we do.

Q. Can you state what makes of cars you service?

A. We service all makes of cars, other than the Ford product.

Q. That includes Chrysler and Nash and Studebaker, does it not?

A. That's correct, all those manufacturers, plus the foreign cars.

[fol. 630] Q. Were you present in the hearing room and did you hear the testimony of the witnesses for this applicant and the witnesses for the General Motors Corporation, intervenor in support?

A. I have.

Q. Now, Mr. Thomas, will you please state what will be the effect on Transport Storage and Distributing Company if this application is granted and if the General Motors automobiles are diverted to Pacific Motor Trucking Company as the General Motors witnesses testified they would be?

A. Yes. Mr. Tarte and I have gone into this at some length when the PMT application came up, and we feel that should this application be granted and we lose the 65 per cent of our total traffic, it would not be economically feasible for us to maintain any facilities of the nature that we have now and, in effect, we would have to—well, we would be pretty much forced to shut her down.

Q. Does that mean also that your services to General Motors dealers in Alaska and to the Buick-Oldsmobile-Pontiac Division for Alaska shipments would also no longer be available?

A. Yes. We wouldn't have any facilities.

Mr. Earp: I believe that is all, Mr. Examiner.

OFFERS IN EVIDENCE

I will offer Exhibits 93 through 97.

[fol. 631] Cross examination.

[fol. 632] By Mr. Johnson:

Q. Now, on the truckaway movements into your facilities, those are largely transcontinental trucking movements, aren't they?

[fol. 633] A. You mean the actual unit that comes to us or whatever is originated?

Q. Yes. Where do most of them originate?

A. Most of them come out of Kenosha and out of points in east Kansas City, so on.

Q. And move all the way by truckaway?

A. Yes, by truck.

Q. That might very well explain the condition of dirt arriving, mightn't it?

A. Oh, yes, it does. We don't have that when we receive them by rail out of Detroit, though.

Q. How do you suppose they are moved all the way, by truck?

A. We are not in the trucking business. I am not qualified to answer that. We are not particularly interested in getting it, either.

[fol. 634]

AFTERNOON SESSION

1:50 p. m.

COLLOQUY

Exam. Linn: The hearing will be in order.

Mr. Handler: Mr. Examiner, I wish to apologize for delaying the resumption of the proceedings. It was due to my receipt of a telephone call from Detroit advising that the National Automobile Transporters Association, which was represented here through last Thursday by Mr. Bieneman, did have some evidence which it wished to offer. Mr. Johnson very cooperatively talked to Mr. Bieneman and, as I understand the arrangement now, it is that Mr. Bieneman will submit to Mr. Johnson a proposal position of the Association, which will be submitted then to the Commission, subject to whatever objection as to materiality Mr. Johnson may wish to make. But the exhibits and the opening statement will go forward to the Commission in the form in which they are submitted by Mr. Bieneman in line with the agreement he and Mr. Johnson entered into.

That can be done at any reasonable time the Examiner may establish, corresponding to the time for the submission of the exhibit by Mr. Smith. That will then remove the request of the Association for further hearing. Mr. Bieneman will submit a brief, if briefs are requested by the applicant, in support of the position of the NATA.

Mr. Johnson: That covers the situation satisfactorily. I, as Mr. Handler indicated, tried to accommodate myself to Mr. Bieneman, because of his absence, in trying to work [fol. 635] out the stipulation procedure. Of course, I am in a way proceeding without full knowledge of what will be in it, and I would reserve any right I might have if there is something in it that goes beyond the scope of our discussion.

Mr. Handler: I understand that. I don't think there will be.

Exam. Linn: The parties should, before the conclusion of the hearing today, set forth in specific terms exactly what additional matter is to come as a late filed exhibit or what stipulations are to be entered into at a time subsequent to the close of the hearing. As the matter now stands, the record is so general that it is possible to submit perhaps something that may possibly go beyond the intent of the parties.

Mr. Johnson: Well, I think that with respect to Mr. Bieneman, I can state my understanding of what he wants.

Exam. Linn: I would suggest you do it by a specific statement at some later point today, perhaps after the conclusion of the protestant's case.

Mr. Johnson: Very well, sir.

Exam. Linn: If the protestants are ready will they call the next witness?

Mr. Jacobson: I will call Mr. Lee.

Mr. Examiner, I have submitted a series of exhibits. May they be marked for identification?

Exam. Linn: The Certificate of Robertson Truck-A-Ways [fol. 636] is marked Exhibit 98; equipment list of Robertson, 99.

Mr. Jacobson: Truck and trailers is 99 then.

Exam. Linn: The map of automobiles and trucks initial authority is 100; map of trucks in secondary is 101; balance sheet of Robertson is 102; initial traffic from Los Angeles, 103; shipments from Van Nuys, 104.

(Protestant's Exhibits Nos. 98 through 104, Witness Lee, were marked for identification.)

Mr. Johnson: Mr. Examiner, may I ask counsel a question?

Exam. Linn: Yes.

Mr. Johnson: We only have one set of these exhibits, and we are under obligation to provide Mr. Frizzell with a set: Do you have two more?

Mr. Jacobson: This is the last.

DAVID M. LEE was sworn and testified as follows:

Direct examination.

By Mr. Jacobson:

Q. State your name.

A. David M. Lee.

Q. Your address, Mr. Lee?

A. 7101 East Slauson Avenue, Los Angeles.

Q. You are employed by Robertson Truck-A-Ways?

A. Yes, sir.

Q. In what capacity?

A. Vice-president and general manager.

[fol. 637] Q. Where is the principal place of business of Robertson Truck-A-Ways?

A. Los Angeles.

Q. What address?

A. 7101 East Slauson Avenue.

Q. What business is Robertson Truck-A-Ways engaged in?

A. In the transportation of motor vehicles.

Q. At what address does Robertson Truck-A-Ways have their principal place of business?

A. At 7101 East Slauson Avenue, Los Angeles.

Q. At that location what property or facilities do they have?

A. They own eight acres of land that is fenced, lighted, surfaced, with offices, adequate shops, docks, for unloading and loading trailers; personnel for the maintenance of the equipment and office personnel; oil and gasoline facilities.

Q. At what other locations in California does Robertson Truck-A-Ways have terminal facilities or facilities?

A. In San Leandro, California.

Q. And San Leandro is adjacent to Oakland?

A. Yes, it is.

Q. At San Leandro at the present time, what facilities do they have there?

A. We have a yard fenced, with office personnel, yard surfaced, and lighted.

Q. I refer you to Exhibit No. 98 for identification. Does [fol. 638] that depict the operative rights or authority of Robertson Truck-A-Ways, with the exception of any pending recommended order?

A. Yes, it does.

Q. I refer you next to Exhibit 99, consisting of six pages. Does that depict the motor vehicles owned and operated by Robertson Truck-A-Ways in the conduct of business?

A. Yes, it does.

Q. Are all of these units adaptable to the transportation of motor vehicles?

A. Yes, they are.

Q. Are they, other than the tractors or trailers, all specially designed trailers for the transportation of motor vehicles?

A. Yes, they are.

Q. Generally speaking are they all of a similar class, with the exception of the capacity?

A. Yes, they are.

Q. As a matter of fact, are they the same type of—are you familiar with the type of vehicle utilized by other automobile carriers?

A. Yes.

Q. Is your equipment materially different from the equipment operated by the applicant and other carriers engaged in this business?

A. No, I would say not.

[fol. 639] Q. Approximately how many years has Robertson Truck-A-Ways been engaged in transportation of automobiles in the Southwest?

A. About 28 years.

Q. How long have you been engaged with Robertson Truck-A-Ways in the conduct of this business?

A. Six years.

Q. And in your capacity as general manager do you have supervision and direction of the overall operation?

A. Yes, I do.

Q. As such are you familiar with the overall operation?

A. I am.

Q. Does your company with regularity render a service between the points you are authorized to serve?

A. Yes, sir, we do.

Q. And does that service consist quite extensively of a daily service to the adjoining states?

A. Yes.

Q. What facilities, if any, do you have in adjoining states?

A. We operate a terminal in Phoenix, Arizona, with personnel, in a suitable yard that is fenced, surfaced and lighted, with servicing facilities, gasoline and oil.

Q. Do you maintain there help too?

A. Yes, we do.

Q. Your company operates as a common carrier, does it not?

A. Yes, sir.

[fol. 640] Q. Do you seek and serve any customers that desire your service?

A. Yes, we do.

Q. What is your principal product that you transport?

A. Automobiles.

Q. For what company?

A. The major percentage of our business is with Chrysler Corporation.

Q. Do you likewise transport other types of automobiles?

A. Yes, we do.

Q. Have you transported Chevrolets?

A. We have.

Q. From the Raymer plant to points in California and elsewhere in the adjoining states?

A. Yes, we have.

Q. Have you likewise transported automobiles out of the South Gate plant of BOP?

A. On occasion, yes, sir.

Q. Is your equipment adapted to the transportation of products that move out of the BOP plant?

A. Yes. Our equipment is automobile transporting equipment that will haul automobiles.

Q. In that connection have you had experience in moving pilot models out of the BOP plant?

A. Not out of the BOP plant, but pilot models with show cars, as they are called, for the zone offices of General Motors BOP.

[fol. 641] Q. And those are the various new model cars that are produced or manufactured in the BOP plant; is that correct?

A. Will you say that again?

(Question read.)

The Witness: They are like models, yes, sir.

By Mr. Jacobson:

Q. Have you had any difficulty, equipment-wise, in the movement of various General Motors products offered to you for transportation?

A. No, sir, we have not.

Q. Now, your Exhibit No. 100 depicts what?

A. That is a map showing the authority of Robertson Truck-A-Ways initial authority covering automobiles and trucks from Los Angeles to the states of California, Oregon and Nevada and Arizona.

Q. Under that authority could you transport vehicles from the BOP plant in South Gate and the Raymer plant to the various states shown on this exhibit?

A. Yes. Our authority includes South Gate and Van Nuys and Raymer.

Q. Is your company ready, able and willing to transport those products for General Motors?

A. We certainly are.

Q. Have you sought that business by solicitation?

A. Yes.

Q. Do you solicit with any degree of frequency?

[fol. 642] A. Yes, sir.

Q. Do you desire to transport those vehicles for the company?

A. Very much.

Q. By the way, do you have facilities to transport those vehicles?

A. Yes, sir.

Q. Is your company financially able to acquire such additional facilities that may be necessary to accommodate the traffic of General Motors to the points you are authorized to serve?

Mr. Johnson: I object to that as being leading and calling for a conclusion of the witness, and no proper foundation has been laid.

Exam. Linn: The witness may answer.

The Witness: I think we do, sir. If we had General Motors traffic, I don't think we would have any trouble getting equipment.

By Mr. Jacobson:

Q. Well, will your company secure the necessary equipment to transport it if you are deficient at the present time if any or all or any part of the traffic is offered to you?

A. We would be very happy to.

Q. I next refer you to Exhibit No. 101 and ask you what that depicts.

A. It depicts the authority of Robertson Truck-A-Ways covering the transportation of trucks by truckaway in [fol. 643] secondary movement from points within 20 miles of San Leandro to the 11 western states.

Q. Are you familiar with the books and records of Robertson Truck-A-Ways?

A. I am.

Q. I show you Exhibit No. 102 for identification. Does that truly reflect the condition of the books and records of your company as of that date?

A. Yes, it does.

Q. I show you Exhibit No. 103. What is the purpose of that exhibit, Mr. Lee?

A. This is a summation of traffic, initial traffic from Los Angeles to the states of Arizona, Nevada and Oregon for the year 1956 and two months of 1957.

Q. And that covers the territory for which you have operating rights under your Exhibit No. 100 from the Los Angeles area; is that correct?

A. Yes, sir.

Q. I notice that the volume of traffic into Oregon is spasmodic. Is there any reason for that?

A. Well, traffic that moves by Robertson doesn't move by any other carrier, and traffic that would move by other means we wouldn't know about.

Q. Well, what other means of transportation, to your knowledge, is there? Is there any other means of trans-
[fol. 644] portation by motor truck or truckaway from the Los Angeles area to Oregon?

A. No, sir.

Q. To your knowledge, does traffic move from Los Angeles to Oregon throughout the entire year?

Mr. Johnson: No proper foundation has been laid for that. All these questions are leading and suggestive.

Exam. Linn: Well, if the witness knows he may tell us how he knows.

By Mr. Jacobson:

Q. Are you familiar with the movement of traffic from Los Angeles to Oregon of automobiles?

A. Yes, sir.

Mr. Johnson: How did he acquire this knowledge?

By Mr. Jacobson:

Q. How did you acquire this knowledge, Mr. Lee?

A. My knowledge came through the traffic department of Chrysler Corporation.

Q. Are you constantly in contact with the Chrysler Corporation traffic department?

A. Yes, we are.

Mr. Johnson: I am going to object to this. The foundation shows his knowledge is based upon discussions with other parties who are not here. It is obviously hearsay.

Exam. Linn: I don't believe there is a pending question. Will you go ahead?

Mr. Jacobson: Sir?

[fol. 645] Exam. Linn: I don't believe there is a pending question. Will you go ahead?

Mr. Jacobson: I think I started one.

(Record read.)

By Mr. Jacobson:

Q. Are you familiar, Mr. Lee, with the comparison of rates of your published rates—rather with the rail-rates into the Oregon territory from the Los Angeles area?

A. Yes, I am familiar.

Q. Do you know of your own knowledge whether traffic moves from the Los Angeles area to Oregon via rail?

A. Yes. There is some movement by rail.

Q. During the months of May, June, July and through December, to your knowledge did traffic move from the Chrysler points to points in Oregon via rail?

A. Yes, it did.

Q. Did you enjoy any traffic during the period of time to Oregon by truckaway?

A. No, we did not.

Q. Approximately what percentage of your truck rate is the rail rate to Oregon from Los Angeles?

A. What percentage?

Q. Yes.

The Witness: Will you read that question again, please?

(Question read.)

Mr. Jacobson: By comparison.

[fol. 646] Mr. Johnson: I object to that as incompetent, irrelevant and immaterial.

Exam. Linn: The witness may state whether the truck rate is higher or lower than the rail rate.

The Witness: The truck rate is higher than the rail rate.

By Mr. Jacobson:

Q. Have you solicited the business of General Motors in the State of California from their Los Angeles plants?

A. Yes, we have.

Q. Have you been able to secure any of it other than the few hauls you have had out of BOP and those shown by Exhibit 104?

A. No.

Q. Were you given any reason why you couldn't get the business?

A. Our solicitation results were that they were aware of our service and have copies of our tariff; should they be able to use us, why, they would, in some cases, the inference, of course, is to meeting competition rates or rail rates.

Q. In connection with your Exhibit 104, those movements that you show, where did those shipments originate?

A. They originate at the Raymer plant of Chevrolet, Van Nuys.

Q. Destined to the points shown on the exhibit?

A. Yes, sir.

Q. Was this business given to you by General Motors or somebody else?

A. These are moved on a government bill of lading.

Q. I note on January 8, 1957, you moved one vehicle to [fol. 647] Camp Mercury, Nevada.

A. Yes, sir.

Q. How did you secure that business?

A. That business was given to us apparently of a main unit destined for Camp Mercury, Nevada.

Q. Just prior to that date, in the latter part of December, were you in communication with the Chevrolet plant at Raymer, California?

A. Yes, sir.

Q. Under what circumstances?

A. We were called on for information that we would be able to handle a shipment of vehicles from the plant over to Camp Mercury, Nevada.

Q. Were you told how many?

A. It would be in excess of 100.

Q. What happened?

A. Nothing happened. Two days went by, and we contacted the—

Q. Did you tell them you could handle them?

A. Oh, yes; yes, we did.

Q. What happened then?

A. Well, we didn't get the movement.

Q. Do you know who moved them?

A. Yes, sir.

Q. Who moved them?

A. PMT.

[fol. 648] Q. How do you know they moved them?

A. I was so advised.

Q. Did you have any communication in connection with this movement with the Government?

A. Yes.

Q. With whom?

A. General Service Administration of Washington, D.C.

Q. And did they tell you why you didn't get the movement?

A. They understood that we had refused the movement in a telephone conversation with Mr. Egan.

Q. Did you ever refuse to move these vehicles?

A. We never did.

Q. And out of the entire group how many did you move?

A. We moved one.

Q. And that was on or about the 5th of the month?

A. Yes, sir.

Q. Do you know of your own knowledge how the others moved?

A. Yes, sir.

Q. How?

A. They moved partly by rail, and the majority of them moved by PMT motor truck.

Q. Those that moved by rail, where did they move to?

A. They were moved to Las Vegas, Nevada.

Q. Do you know how they moved from Las Vegas, by what authority or by whom they were moved from Las Vegas to Mercury, Nevada?

[fol. 649] Mr. Johnson: I have an objection to that.

Mr. Jacobson: If he knows.

Mr. Johnson: I withdraw my objection.

The Witness: I understand the move was completed—

Mr. Johnson: If he knows.

By Mr. Jacobson:

Q. Do you know of your own knowledge?

A. Yes.

Mr. Johnson: May I have the answer read?

(Record read.)

By Mr. Jacobson:

Q. Do you know of your own knowledge how they moved from Las Vegas to Camp Mercury, Nevada, or by what authority?

A. I was advised the authority was granted to PMT to make the move.

Mr. Johnson: Is the witness talking about the shipment from Las Vegas, counsel?

Exam. Linn: That is the way I understand it.

By Mr. Jacobson:

Q. Does your company have on file with the Commission a tariff covering the entire operation?

A. Yes, sir.

Q. Do you perform split deliveries?

A. Yes, sir.

Q. Through your entire territory?

A. Yes, sir.

Q. If the traffic of General Motors or any part thereof [fol. 650] is offered to you, would you be willing to transport it on your tariff in accordance with the authority you have?

A. Yes, sir.

Q. Now, Mr. Lee, does your company maintain a safety program?

A. Yes, it does.

Q. Tell us generally what it consists of.

A. We have a full time safety director charged with the responsibility of the safety operation of our operations. The personnel director works very closely with him, holding regular safety meetings, advising the boys in groups, small groups, as well as general meetings, of regulations

and advises as to the safety of operation. We have regular engineering service on the highway that makes between two and four hundred reports to us a month on the observation of our equipment on road.

Q. Have you in the past transported any motor vehicles from the South Gate plant of General Motors to any point or place in the State of Arizona?

A. Yes, we did.

Q. And what type of vehicles were those?

A. They were Oldsmobile automobiles.

Q. Did you transport them on your regular equipment?

A. Yes, sir.

Q. And where did you receive them from the General Motors Company with respect to their property in South Gate?

A. Well, it was in South Gate, the property that adjoins [fol. 651] the PMT portion of the yard.

Q. Who moved the cars from the delivery gate to the highway where they were given to you, do you know?

A. The factory.

Q. But you didn't receive them on the property of the PMT or the property of General Motors?

A. Well, it was General Motors property, I would say, but not used by PMT.

Q. That wasn't a Government movement, was it?

A. No, sir.

Q. Now, in connection with the movements off the Raymer property, did you go on the property of the General Motors to pick them up?

A. Yes, sir.

Q. How did you get to the point where you picked them up on General Motors property?

A. Well, they have a driveway that is accessible to our trucks. The units were given to us right there where we could load them.

Q. Did you have any difficulty in going over this driveway or loading on the property or getting off the property with the load?

A. No, we had none.

Q. Does your company, in the regular course of its busi-

ness, interchange with other carriers to perform a through operation?

A. Yes, sir.

[fol. 652] Q. Would your company, if traffic were available from the General Motors plant, interline with lawful carriers to effect a through delivery to destination points that you might not be authorized to serve under your rights, or they might not be authorized to serve that could serve in conjunction with you?

A. Yes, sir. We would have to work with anyone.

Mr. Jacobson: I offer the exhibits in evidence.

Mr. Johnson: No objection to the exhibits.

Exam. Linn: Exhibits 98 through 104 inclusive are received in evidence.

(Protestant's Exhibits Nos. 98 through 104, Witness Lee, were received in evidence.)

Cross examination.

By Mr. Johnson:

Q. Mr. Lee, you have no operating authority whatsoever from Oakland, California; is that right?

A. Sir?

Q. You have no operating authority at all from Oakland, California?

A. Yes, we have some operating authority from Oakland. From Oakland did you say?

Q. Yes.

A. As a point within 20 miles of San Leandro in secondary by truckaway trucks, we can serve that area.

Q. In secondary movement only?

A. Yes.

[fol. 653] Q. You are not authorized to handle new automobiles, trucks or buses in initial movement from Oakland, are you?

A. By truckaway?

Q. By truckaway or driveaway.

A. Robertson Company is not.

Q. That is the company you are testifying for today, isn't it?

A. Yes.

Q. Now, with respect to South Gate, do you have authority to transport new automobiles, trucks and buses in initial movements from the General Motors plant there? Are you authorized under your authority to enter the plant facilities and accept delivery of new automobiles, trucks and buses?

A. Our authority covers South Gate, California, and we can operate from South Gate.

Q. Well, now, isn't there some question that you have had with the Interstate Commerce Commission as to the exact scope of your authority, and more particularly your right to actually serve or accept deliveries of these units at that plant?

A. I talked to the district supervisor in Los Angeles.

Q. Didn't you get a letter from him?

A. I did.

Q. Now, I hand you a letter dated July 3, 1956, which is addressed to your attention. It is from the district supervisor. Is that a true copy of the letter which you received?

A. I think it is, yes, sir.

[fol. 654] Mr. Johnson: May I offer that for identification?

Exam. Linn: Exhibit 105.

(Applicant's Exhibit No. 105, Witness Lee, was marked for identification.)

By Mr. Johnson:

Q. Isn't it a fact that you don't have authority—

Mr. Jacobson: Just a minute. Before you ask that question—

Exam. Linn: Will you complete your question, Mr. Johnson?

OFFER IN EVIDENCE

Mr. Johnson: I will withdraw the question and simply offer the exhibit, which speaks for itself.

Mr. Jacobson: Just a moment, please. I will have no objection to the letter going in.

Exam. Linn: Exhibit 105 for identification is received in evidence.

(Applicant's Exhibit No. 105, Witness Lee, was received in evidence.)

By Mr. Johnson:

Q. Now, to the extent that you do have authority with respect to South Gate and with respect to Raymer, you are only authorized to serve Arizona, Nevada and Oregon in initial movements?

A. Yes, sir, and California.

Q. Now, with respect to the shipments you say you handled from the Raymer plant, excluding those moving under government billing, can you give us the dates of those shipments and the volume in the year 1956? Let's take the [fol. 655] Raymer plant first. How many units did you transport for General Motors in which General Motors actually paid the freight from Raymer in 1956?

A. I don't recall any.

Q. What is the situation with respect to South Gate for the year 1956?

A. One load, I think, of three automobiles to Phoenix, Arizona. That movement took place in June the 25th, 1956 for delivery to Phoenix, Arizona.

Q. And that was three units, three automobiles, three vehicles?

A. Three Oldsmobiles.

Q. What other movements did you have in the year 1956?

A. I don't recall any other movement for the BOP plant in 1956.

Q. You don't recall any other movement in which BOP requested you transport its products at rates or charges paid by it?

A. No, sir, I do not.

Q. Now, with respect to this movement from Las Vegas to Camp Mercury, as I understand your testimony, you were advised by the Interstate Commerce Commission that that movement was made by PMT?

A. My advice from the Commission's office was that temporary authority had been granted to PMT, and they completed the movement.

Q. From Las Vegas?

A. Which included Las Vegas to Camp Mercury as well as from Raymer to Camp Mercury.

[fol. 656] Q. Was that information given to you in writing?

A. Sir?

Q. Was that information given—

A. It was given to me over the telephone.

Q. Who gave it to you?

A. It came from the San Francisco office of the Interstate Commerce Commission.

Q. Are you sure that did not refer to the movement from the Raymer plan to Camp Mercury?

A. Well, his wording to me was that the movement had been completed on temporary authority.

Q. And that temporary authority covered a movement from Raymer to Camp Mercury, didn't it?

A. Yes. My knowledge of the situation was that there was 35 units already in Las Vegas, and the question was put to us whether we could move them or not.

Q. Which moved by rail?

A. Yes, sir.

Q. You don't actually know how those units were delivered from Las Vegas?

A. I didn't see them moved, no, sir.

Q. You don't actually know how they were moved from Las Vegas to Camp Mercury?

Mr. Jacobson: He said he didn't see them moved. I assume you will show us how they were moved.

[fol. 657] Mr. Johnson: I haven't any idea. We didn't do it.

By Mr. Johnson:

Q. Now, with respect to your common carrier service in transportation of new automobiles, trucks and buses in initial movements, you have only served Chrysler; is that correct?

A. We serve anybody within the scope of our authority.

Q. I mean within the scope of your authority.

A. Yes, sir.

Q. Chrysler is the only manufacturer that you serve in initial movement?

A. No.

Q. Who else do you serve? I am talking now solely about initial movement of new automobiles, trucks and buses.

Let's take the year 1956. As a common carrier did you transport new automobiles, trucks and buses in initial movement for anyone other than Chrysler, excepting these isolated shipments that we have just been talking about?

A. Including the government shipments, our movements on a government bill of lading?

Q. Excluding them.

A. No, I don't know of any other.

Mr. Jacobson: You are talking about initial movements?

The Witness: Yes.

By Mr. Johnson:

Q. So far as initial movement is concerned, your operations are actually confined to Chrysler?

[fol. 658] A. Not confined, but that's our volume of business, yes.

Q. That is the way it works out?

A. Yes.

Q. Now, do you assign equipment to the Chrysler plant?

A. Specific equipment?

Q. Yes.

A. Well, our operation is to take care of whatever need arises.

Q. But it is made available at all times to meet Chrysler's needs, isn't it?

A. Well, yes.

Q. Now, where is the storage yard that you have in Los Angeles with relation to Chrysler plant?

A. At 7101 East Slauson.

Q. How far is that from the Chrysler plant?

A. I guess about six blocks.

Q. How far is it from the Raymer plant?

A. From what?

Q. Raymer?

A. I don't know how far that is.

Q. Well, is it roughly five miles, ten miles, fifteen, twenty?

A. I don't know.

Q. How far is it from the South Gate plant?

A. I would say within four or five miles.

Q. In soliciting the General Motors business at these two plants, if you had gotten it, would it be your intention to [fol. 659] use that storage yard?

A. If it were needed we might be able to work something out like PMT on part of the yard.

Q. If you couldn't, then you would plan to use that storage yard?

A. Whatever was needed. We would get whatever was necessary to accommodate the need.

Q. But you haven't really studied the situation sufficiently to know precisely whether you would use that storage yard or some other facilities, have you?

A. Yes, we have. We have made investigations on property available close to both plants.

Q. Yet you don't know how far your storage yard is from the South Gate plant?

A. No. Our interest then would be to be as close to the plant for the need as we could get.

Q. So, if necessary, you would acquire new storage facilities?

A. Yes, we would.

Q. I gather that in your solicitation of the two plants down there you were advised that the existing carrier, namely PMT, was rendering a satisfactory service?

A. Well, our inquiry wasn't whether their service was satisfactory. It was to get some business for ourselves.

Q. Didn't you come away with the impression that General Motors was satisfied with the service of PMT?

Mr. Jacobson: Object to that as an attempt to read the [fol. 660] other man's mind, conjecture twice removed; what he came away with. He didn't get the business, only part of it.

Exam. Linn: Are you able to answer that?

The Witness: Do I know what General Motors thought about their present carrier? Is that the question?

Exam. Linn: Yes.

The Witness: No, I didn't ask.

By Mr. Johnson:

Q. The traffic shown on your Exhibit 103 was all Chrysler traffic, wasn't it?

A. Yes.

Q. And the traffic shown on Exhibit 104 consisted of traffic on which someone other than General Motors paid the transportation charges?

A. Yes. It was all General Motors products.

Q. The government actually paid the transportation charges?

A. Yes.

Q. If this application were approved, you would not be deprived of any business that you are presently enjoying; isn't that a fact?

A. I don't know. We have enjoyed some government business out of there. I don't know how that would affect that.

Q. You know that that traffic billed by General Motors is presently moving by rail, don't you?

A. I understand they just moved 117 by truck that we were deprived of.

[fol. 661] Q. I am talking about the destination territory involved here, excluding Camp Mercury.

Mr. Jacobson: You asked the question about diversion of traffic. He was talking about territory that he has the authority to serve. He was just deprived of 118 cars.

Mr. Johnson: I am stating my own question.

Mr. Jacobson: I am objecting to it because you are circumscribing conditions that changed the question.

Exam. Linn: Apparently the matter involves a question already of record.

Mr. Johnson: I won't pursue it.

That is all I have.

Redirect examination.

By Mr. Jacobson:

Q. Mr. Lee, you testified in response to my question that you moved some Oldsmobiles or some General Motors products out of the BOP plant in California. On cross-examination you were asked about any other movements besides the Oldsmobiles into Arizona. Did you have in mind the—or where did those vehicles move from that you moved in California for General Motors?

A. They moved to San Francisco. I don't recall the year; I think it was either the last of '55 or maybe during '55, two loads that were moved.

Q. Where did you get those?

A. We got them right at the plant. I think those vehicles [fol. 662] we were able to get off of the PMT property.

Recross examination.

By Mr. Johnson:

Q. Those were intrastate movements weren't they?

A. Yes, sir.

Q. That is all I have.

OFFER IN EVIDENCE

I offer Exhibit No. 105.

Exam. Linn: All exhibits mentioned during the course of the testimony of Mr. Lee have been received.

Mr. Jacobson: I now call Mr. Lee on behalf of Dallas & Mavis Forwarding Company.

DAVID M. LEE having been previously duly sworn, testified as follows:

Direct examination.

By Mr. Jacobson:

Q. Do you occupy any position with Dallas & Mavis Forwarding Company?

A. Yes, I do.

Q. What position do you occupy with them?

A. Vice-president.

Q. What is your position with Dallas & Mavis Forwarding Company?

A. Vice-president.

Q. What is the business of Dallas & Mavis Forwarding Company?

A. They are transporters of motor vehicles and related—

Q. And Dallas & Mavis Forwarding Company is a—Robertson Trucking Company is a wholly owned subsidiary?

[fol. 663] A. Yes. Dallas & Mavis own all the stock.

Q. I show you a document entitled Sub 11, MC 29886, Dallas & Mavis Forwarding Company, and ask you if that is one of the authorities held by Dallas & Mavis Forwarding Company?

A. Yes, it is.

Q. And what, if any, facilities does Dallas & Mavis Forwarding Company have in the State of California?

A. They maintain personnel and joint use of the yard in San Leandro, California.

Q. Does Dallas & Mavis Forwarding Company perform any services under their Sub 11?

A. Yes, they do.

Q. Is Dallas & Mavis Forwarding Company ready, able and willing to transport any vehicles that are offered to them under their authority, under the Sub 11, that might be involved in this proceeding?

A. Yes, sir.

Mr. Jacobson: That is all. I offer Sub 11.

Exam. Linn: It is marked Exhibit 106 and received in evidence.

(Protestant's Exhibit No. 106, Witness Lee, was marked and received in evidence.)

Exam. Linn: Any questions of the witness?

Mr. Johnson: No questions.

Exam. Linn: That is all, Mr. Lee. Thank you.

[fol. 664] (Witness excused.)

Mr. Jacobson: May these exhibits be marked, Mr. Examiner?

Exam. Linn: They are marked as follows: Exhibit 107 is the Permit of Hadley Auto Transport; the map is 108; the list of equipment is 109; the point list is 110; the exhibit showing vehicles transported is 111; the balance sheet is 112.

(Protestant's Exhibits Nos. 107 through 112, Witness Young, were marked for identification.)

T. J. Young was sworn and testified as follows:

Direct examination.

By Mr. Jacobson:

Q. State your name, please.

A. T. J. Young.

Q. Where do you reside?

A. Palo Alto, California.

Q. What is your business or occupation?

A. Vice-president of Hadley Auto Transport.

Q. What is Hadley Auto Transport?

A. A transporter of motor vehicles.

Q. Where is the principal place of business of Hadley Auto Transport?

A. Long Beach, California.

Q. At that location what, if any, facilities does the company have?

A. A terminal of approximately ten acres with storage [fol. 665] facilities, with administrative offices, with shops and garage facilities and the other usual facilities of a motor carrier.

Q. At what other points in California does your company maintain facilities?

A. A similar terminal at Milpitas, California.

Q. Approximately how many acres do you have there?

A. About eight and a half acres.

Q. Is that your own building on it, office building, shops and so forth?

A. Yes.

Q. Now, where else does the company maintain facilities?

A. The only other facility in California is a storage yard in Los Angeles adjacent to the Mercury plant in Los Angeles, and in Arizona at Wickenburg, Arizona, we have a driver relay station.

Q. Hadley Auto Transport is a contract carrier, is it not?

A. Yes.

Q. And the authority they have is set forth on Exhibit No. 107 for identification?

A. Yes.

Q. I will call your attention to Exhibit 108 for identification. What does that purport to show?

A. That is a map showing the extent generally of Hadley's authority in initial movements.

Q. Of automobiles?

[fol. 666] A. Of automobiles.

Q. That shows from Richmond and from points in Los Angeles County to the various states as outlined on the list; is that correct?

A. Yes.

Q. And a substantial portion of this territory is the territory proposed to be served by the applicant in this proceeding, is it not?

A. Yes.

Q. Exhibit 109, is that the most recent list of equipment owned and operated by the Hadley Auto Transport?

A. Yes, it is.

Q. All of the units of equipment, trailers, are they specially adapted to the transportation of motor vehicles?

A. They are.

Q. Do they compare favorably with other units of equipment owned and operated in the Western states for the transportation of motor vehicles?

A. I believe so.

Q. Are they adaptable to the transportation of various types and forms of motor vehicles?

A. Yes.

Q. In the conduct of your business do you handle vehicles of the typed used by General Motors?

A. Yes.

[fol. 667] Q. Manufactured by General Motors?

A. Yes.

Q. Your company has new as well as initial as well as secondary movements in various part of the western states?

A. We have.

Q. Under those authorities do they move all types of vehicles?

A. Yes.

Q. Next I show you Exhibit No. 110 and ask you what that purports to show.

A. It is a list of cities and towns served by the company in the Western states into which its initial authority extends.

Q. Particularly calling your attention to Arizona, Nevada and Utah and New Mexico, with what degree of regularity is your equipment in those states?

A. In most cases there is daily service into those states.

Q. Is it less frequent into Montana and Idaho?

A. Yes.

Q. Do vehicles move into that territory?

A. Yes.

Q. Do you know how they move?

A. From what points?

Q. From Los Angeles area?

A. They move from the Los Angeles area from the plants with which I am most familiar, irregularly.

Q. You do conduct the service into that territory when [fol. 668] the traffic is offered?

A. We do.

Q. I show you Exhibit No. 111. Is that taken from the books and records of the company?

A. It is.

Q. Of course it shows the number of vehicles transported from Los Angeles County to the states involved; is that correct?

A. Yes.

Q. The major portion of your movement is to the states immediately adjacent to California; is that correct?

A. Yes; the states closest to California.

Q. Do you know whether or not the question of rates may divert part of the traffic to rail to the most distant points?

A. I don't know.

Q. I show you next Exhibit No. 112 and ask you if that is taken from the books and records of your company.

A. It is.

Q. Is your company ready, able and willing to secure such additional equipment as may be necessary to take on any new business that might be offered?

A. We are.

Q. Would your company be willing to enter into a contract with General Motors for the transportation of their products in the territory you are authorized to serve?

A. We would.

[fol. 669] Q. Is the company willing, ready and able to seek such additional authority as may be required to give them a service to all the territories that they might require?

A. We would.

Q. Has your company transported any motor vehicles for General Motors, to your knowledge, out of Raymer or Oakland?

A. No.

Q. To your knowledge has your company made General Motors traffic men familiar with the rights and authorities you have in the offer of service that you have?

A. In some instances.

Mr. Jacobson: That is all.

Exam. Linn: Cross-examine.

Cross examination.

By Mr. Johnson:

Q. I would like to ask a question for clarification. Exhibit 112 does not show the origin points related to these destination points. Can you explain that?

A. Exhibit 112?

Q. 110. I'm sorry.

A. Exhibit 110?

Q. Yes.

A. The origin points from which the vehicles would move to those points would be in general, according to our authority Los Angeles County, specifically in the county. There would be an assembly plant at Long Beach and one at Los Angeles.

[fol. 670] Q. That really gives a breakdown of your companion exhibit, doesn't it? Exhibit 111?

A. I don't understand your question.

Q. Well, would the destination points shown on Exhibit 110 be representative of the points involved in the movement shown on Exhibit 111?

A. Yes.

Q. And Hadley is a contract carrier?

A. Yes, sir.

Q. And with what company does it presently have contract for initial movements?

A. Ford Motor Company.

Q. How long have you served Ford Motor?

A. About 25 years.

Q. Do you assign equipment to the exclusive use of the Ford plant?

A. I don't believe we would—we assign the equipment, inasmuch as Ford is at this present time our only initial shipper. It is available to it along with any secondary shippers that we might have.

Q. So, as a practical matter, it is devoted exclusively to Ford service as of the present with respect to initial movements?

A. With respect to initial movements it would be.

Q. Now, where are your storage facilities at Los Angeles?

[fol. 671] A. Directly across the street from the Lincoln-Mercury assembly plant in Los Angeles.

Q. How far are those facilities from the Raymer and South Gate plants?

A. South Gate plant I would estimate four or five miles, and from the Raymer plant I would estimate 20 miles. I may be a little off.

Q. Just roughly.

A. Yes.

Q. Now, in this long standing relationship with the Ford Motor Company are you given advance information as to model changes?

A. We are.

Q. Do you regard that as of a confidential character and not to be revealed to competitors of Ford?

A. With respect to styling, any information along that line, of course, is not made available to us. Dimensions of cars are, and I would imagine that it could become of that nature.

Q. Are your representatives ever called to the main plants of Ford to actually see the new models in advance of their release?

A. Yes.

Q. So that you do get advance information as to style changes?

A. Yes, at times.

Q. And that is confidential, isn't it?

A. Yes.

Q. Now with respect to Milpitas, where are your facilities?

[fol. 672] A. Approximately one mile from the Ford assembly plant.

Q. And how far is that from the Oakland plant of General Motors?

A. I would estimate 28 miles; perhaps somewhere in that neighborhood.

Q. Are you actually handling any traffic for Ford from that plant, the Milpitas plant?

A. Yes.

Q. You haven't offered any exhibits showing the movement from that plant, have you?

A. No, sir.

Q. To the extent that you have reported from the Interstate Commerce Commission to serve the Milpitas plant of Ford, are you exercising it?

A. Yes.

Q. So that pursuant to that authority you are actually making distribution from Ford Motor Company to the destination territory you are authorized to serve?

A. That is correct.

Q. When was the Milpitas plant put into operation?

A. In the spring of 1955.

Q. Prior to that time did Ford have a plant at Richmond?

A. It did.

Q. And did you serve the Richmond plant?

A. Yes.

Q. That plant was deactivated, was it not?

[fol. 673] A. Yes.

Q. So that since its deactivation you naturally have not transported any vehicles with respect to Richmond?

A. That's correct.

Q. Now, your permit authorizes transportation from places of manufacture or assembly in Richmond, California. The Melrose plant of General Motors is not located in Richmond, is it?

A. No.

Q. The financial exhibit, Exhibit 112, shows common capital stock of Hadley, \$95,000, and unappropriated surplus, approximately \$640,000. Hadley is incorporated, is it not?

A. Yes.

Q. Is the stock of that corporation owned by Everett Hadley and members of his family?

A. Some of it is; a substantial amount of it is.

Q. Mr. Hadley owns 586 out of 1,000 shares, doesn't he?

A. I think so.

Q. How many shares does his wife own? She owns some, doesn't she?

A. I don't believe so.

Q. Clara P. Hadley owns 229 shares?

A. That's correct.

Q. How is the balance held?

Mr. Jacobson: If you have the information let me look at it, and I will tell you if it is right.

[fol. 674] Mr. Johnson: I am satisfied with my information.

The Witness: I can't tell you the precise ownership to the number of shares. I will say this: All of the stock except 35 shares is owned by members of the family.

By Mr. Johnson:

Q. Now, you are able to give the Ford Motor Company, in your capacity as a contract carrier, truckaway service to the normal distribution areas of its assembly plants in California, aren't you?

A. Yes.

Mr. Johnson: That is all I have.

Redirect examination.

By Mr. Jacobson:

Q. Mr. Young, within the past few years has Hadley Auto Transport had contracts with other assembly plants besides Ford Motor?

A. It has.

Q. With what plants?

A. For a number of years and up to two or three years ago when the two plants were deactivated, it had contracts covering initial traffic with the Nash plant at El Segundo, California, and the Willys plant at, I believe, Vernon, California, into a number of states.

Q. Did they transport vehicles under those contracts?

A. Yes.

Q. May I ask one question that should have been on direct? Does your company maintain a safety program?

[fol. 675] A. It does.

Q. What does it consist of?

Mr. Johnson: I will stipulate that Hadley—

Mr. Jacobson: It is a very extensive plan.

Mr. Johnson: I will stipulate it is an extensive and effective plan.

Mr. Jacobson: That's fine.

Exam. Linn: Any objections to the exhibits?

Mr. Johnson: No objection.

Exam. Linn: Exhibits 107 to 112 inclusive are received in evidence.

(Protestant's Exhibits Nos. 107 through 112, Witness Young, were received in evidence.)

Exam. Linn: Thank you, Mr. Young. You are excused.

(Witness excused.)

Exam. Linn: We will take a five minute recess.

(Short recess.)

Exam. Linn: The hearing will be in order.

Mr. Johnson: Mr. Examiner, Mr. Earp has asked the applicant to produce certain information. He wanted an exhibit showing the equipment owned, operated and assigned by PMT to the three General Motors assembly plants in California, and he also wanted to know whether that equipment was used exclusively in that service. I have the exhibit ready and would like to have it marked for identification.

[fol. 676] Exam. Linn: It will be marked Exhibit 113.

(Applicant's Exhibit No. 113, Mr. Johnson, was marked for identification.)

OFFER IN EVIDENCE

Mr. Johnson: I offer that exhibit.

Mr. Earp: No objection.

Exam. Linn: Is it understood this document will satisfy the inquiry that you made?

Mr. Earp: Yes, sir.

Exam. Linn: The stipulation is allowed.

Exhibit 113 for identification is received in evidence as correctly showing what it purports to show.

(Applicant's Exhibit No. 113, Mr. Johnson, was received in evidence.)

Mr. Johnson: There was one additional fact that Mr. Earp was interested in that we discussed and could cover by stipulation.

This equipment is devoted exclusively to the service of these plants, certain portions being assigned specifically to each of the plants. We made a check of the records of the company for the last three months of 1956 and find that the only change in assignments was one unit switched from one plant to another plant for service. The only occasion for taking these units out of service of any of the plants is either retirement, or if the volume of business for a protracted period should result in a very substantial surplus [fol. 677] of equipment, it is withdrawn from the service of the plant.

Is that stipulation satisfactory to you, Mr. Earp?

Mr. Earp: Yes, it is satisfactory.

Exam. Linn: The stipulation is allowed.

Mr. Earp: Mr. Examiner, now that the exhibit and the stipulations in which I was interested have been put into the record, I wonder if I might ask leave to be excused from the hearing?

Exam. Linn: You may go if you wish.

Mr. Handler: Mr. Examiner, I ask that the following exhibits be marked for identification.

As Exhibit No. 114, Certificate of Public Convenience and Necessity, Convoy Company; Exhibit No. 115, terminal stations of Convoy Company; as Exhibit No. 116, Convoy Company list of equipment, November 20, 1956; Exhibit No. 117, Safety Program; as Exhibit No. 118, Convoy Company Balance Sheet as of December 31, 1956; and as Exhibit No. 119, Profit and Loss Statement for the year ending December 31, 1956; and as Exhibit No. 120, map of Berkeley, California.

Exam. Linn: They may be marked in the manner specified.

(Protestant's Exhibits Nos. 114 through 120, Witness Weisler, were marked for identification.)

L. F. WEISLER WAS SWORN and testified as follows:

Direct examination.

[fol. 678]

By Mr. Handler:

Q. Mr. Weisler, will you please state your full name, your position with protestant Convoy Company, and your business address?

A. L. F. Weisler—W-e-i-s-l-e-r. I am president of Convoy Company, and my business address is Post Office Box 348, San Jose, California.

Q. What are your duties?

A. I am president of the company and devote my time to the management of the various and all phases of the company.

Q. Are you familiar with its operations?

A. Yes, I am.

Q. What facilities does it maintain at or near San Jose, California, where you maintain your place of business?

A. At San Jose we have a six-acre yard, a concrete terminal building containing our shops, repair facilities, offices, driver facilities, dispatching facilities and so on.

Q. That, along with the other terminal stations is described generally in Exhibit No. 115 for identification?

A. Yes. Exhibit 115 gives mention of that location and other locations where we have terminal facilities.

Q. Can you tell us which of these are owned by Convoy or its affiliates and which are leased?

A. We have a 35 year lease on the property at Seattle, which has about 25 years to go. We leased the land only; we own all the improvements on it.

[fol. 679] In Portland we lease the terminal facility ground, and we own all of the improvements on that ground, and that lease has approximately ten years to go.

Q. In Los Angeles?

A. In Los Angeles we rent on a month to month basis the facilities shown on the exhibit. San Jose I have just described.

At Billings, Montana, we—oh, at San Jose we own the land and the building through a wholly owned terminal

building company which Convoy Company leases from the terminal company.

At Billings we rent the facility described. The same would apply at Logan, Utah, mentioned on page 2, and at Laramie, Wyoming, we use the facilities of the large super service station and its ground facilities as needed. Right at the present time we have no activity at Laramie.

Q. Are all of the stations which you have described presently being used in the common carrier operations of Convoy Company?

A. Yes, they are.

Q. Are you presently building any new terminal within the territory embraced by this application?

A. Yes. At Los Angeles we are building a terminal on leased property. We are engaged in building that terminal facility right now, which should be ready to move into by mid-summer.

Q. And will that then be used in the common carrier operations of Convoy Company?

A. Yes, it will.

[fol. 680] Q. Are the operating rights held from the Interstate Commerce Commission authorizing motor common carrier services described in Exhibit No. 114 for identification?

A. Yes, they are.

Q. Included in those rights does your company hold initial authority in truckaway operations from Richmond, California, to points in Idaho, Washington and Oregon?

A. We do, described on page 3 under Sub 22.

Q. Now, was that authority used at one time for the movement of Ford automobiles and trucks from the plant at Richmond to the states named?

Mr. Johnson: Pardon me. Could I have that read? I didn't hear the question. I have no objection.

(Question read.)

The Witness: Yes.

By Mr. Handler:

Q. Does your company also hold secondary authority in truckaway movement for movement of motor vehicles between points in California, Oregon, Washington, Idaho and Montana, et cetera, as, for example, shown in Sub 5 on page 1 of Exhibit No. 114?

A. Yes, we do, described in Sub No. 5.

Q. Have you determined the population as revealed in the 1950 census of the Census Bureau of the City of Richmond, California?

A. Yes, I have. It exceeds 99,000, the population.

Q. And pursuant to the Commission's rules designating [fol. 681] a commercial zone, you then have four miles within the city limits of Richmond as the commercial zone of Richmond?

A. That is correct.

Q. Have you caused to be prepared under your direction Exhibit No. 120 which shows the distance from the city limits of Richmond to the city limits of Oakland?

A. Yes, I have.

Q. And according to the map, Exhibit No. 120, is the city of Oakland within four miles of the city of Richmond?

A. It is within three and a half miles.

Q. And the blue line indicates the mileage from one to four, does it not?

A. That's right, the blue line with the crosses across the blue line.

Q. It is then the opinion of your company that it can serve Oakland, California, under its authority and can serve Richmond, California?

A. That is my understanding, yes.

Q. Do you offer service on that basis?

A. Yes.

Q. Now, with respect to equipment, have you caused the fleet to be listed in Exhibit No. 116 as of November 20, 1956?

A. Yes.

Q. Is that equipment specifically designed and dedicated to the transportation of motor vehicles?

[fol. 682] A. All of it is.

Q. And how many motor vehicles can you transport on the varying combinations that you have available? From what to what?

A. Most of this equipment is six unit or six car or truck capacity. There are, however, a few five unit capacity older type rigs listed on this exhibit, but basically they are recent model six car capacity equipment.

Q. How many units are in that fleet?

A. Well, there are listed 181 revenue trucks and trailers and 203 revenue trailers and semi-trailers. Since this was prepared, November 20, however, we have obtained 20 additional trucks, new trucks, and most of those 20 are now in operation. Trailers are being built to go with them.

Q. How many units will they transport?

A. All six car capacity.

Q. Are all of the units shown on Exhibit No. 116 now being utilized by Convoy Company in its operations?

A. Yes.

Q. Generally in the eleven western states?

A. That is right.

Q. Does the list in Exhibit No. 116 represent any recent increase in a number of units that you formally had?

A. Yes, it does. I might say this: Fully 50 per cent of this equipment has been put in service since the first of 1955.

Q. As a result of these acquisitions that you have de-[fol. 683] scribed, are you now able to accommodate all demands for service made upon you?

A. I would say yes, we are.

Q. Could you accommodate any additional traffic?

A. Well, we can always accommodate additional traffic.

Q. Would you accommodate such traffic as is pertinent to this case which might be offered to you by General Motors Corporation from Oakland, California?

A. Yes. We could make arrangements to handle it.

Q. And if your existing fleet should prove insufficient, does your company have the resources to acquire additional equipment?

A. Our company and our company's stockholders do have that ability and would do so.

Q. Exhibit No. 118 is a balance sheet as of December 31.

1956, Mr. Weisler. Is it taken from the books and records of your company?

A. It is.

Q. Are your records kept in conformity with the uniform system of accounting of the Commission?

A. Yes, they are.

Q. To the best of your knowledge and belief does it truly reflect the assets, liabilities, capital stock and surplus of your company as of December 31?

A. Yes.

[fol. 684] Q. To your knowledge has there been any substantial change since that time?

A. No, there hasn't.

Q. Was the profit and loss statement, Exhibit 119, similarly prepared?

A. Yes, sir.

Q. Now, in addition to the assets that are there set forth, do you have any commitment from your bank with respect to your ability to incur additional equipment obligation?

A. We recently got a commitment from the bank indicating they were agreeable to extending up to \$300,000 additional money for additional facilities.

Q. Would that kind of money represent a down payment on any additional equipment you wished to purchase?

A. Yes, a substantial amount, on the basis on which we operate.

Q. Now, in addition to the initial authority that you have, you have described certain secondary authority. Does your company interline with other motor carriers?

A. Yes.

Q. Is it willing, ready and able to effect interline arrangements for any traffic that may be involved in this proceeding?

A. Oh, yes.

Q. And does it stand ready to establish and perform single line initial service from Oakland to points in Oregon, Idaho and Washington?

[fol. 685] A. Yes, sir.

Q. In your service that you now perform under your certificate, do you blanket all of the towns and communities in the eleven western states pretty much?

A. Yes, and we have certain authorities that extend beyond the eleven western states.

Q. Do you have these terminals scattered throughout the eleven western states which are used for that service?

A. For that purpose, yes.

Q. And have you ever solicited the business of General Motors Corporation at Oakland, California for movement into Idaho, Oregon and Washington?

A. Yes, I have.

Q. Will you tell us about that effort and what occurred, if anything?

A. I would say approximately in the spring of 1954 I submitted to Chevrolet division with General Motors in Oakland a proposal as to service and charges on vehicles moving from Oakland into the northwest states.

Q. Was that rate proposal detailed to show the cost at the points in these three states?

A. It was detailed to the extent that it showed several registrations by counties in the states, the distance from Oakland to each point where I considered a Chevrolet dealer might logically be located; our rate to that destination.

686] Q. Who did you submit that to?

A. Mr. Cron.

Q. Mr. George Cron who has testified in this proceeding?

A. Yes.

Q. And with what result?

A. He wrote me that he wasn't interested at that time.

Q. Now, did anything occur subsequently in connection with your offer?

A. Yes. We got a general reduction in rail rates into the State of Oregon and a few points in the State of Washington.

Q. From what points?

A. From Los Angeles group points and from San Francisco group points.

Q. Did you attempt to have those rates suspended?

A. I did.

Q. Were you successful?

A. No.

Q. Now, did the rails defend the rates?

A. Yes, they did.

Q. Were those rates initiated by Southern Pacific Company?

A. I wouldn't be in a position to know.

Q. Do you have the reply that was filed on behalf of the rail lines in that proceeding?

A. Yes, I do.

Q. Did it refer to any truck competition from Oakland [fol. 687] to the General Motors plant at Oakland to the three states as justification for the state proposal?

A. I did and named my rates specifically to given points. As an example, Eugene, Oregon, and Lewiston, Idaho.

Q. The proposed rates of Convoy Company—or the existing rates of Convoy Company?

A. The existing rates of Convoy Company and the proposed rates for Chevrolet.

Q. And as a result those reductions were established?

A. By the rail lines, yes.

Q. Were you ever then successful in getting any of the traffic yourself?

A. No.

Q. Do you know how the traffic is presently moving from Oakland to points in Oregon, for example?

A. Chevrolet traffic, my observation is that it moves via railroad.

Q. Do you—that is your company—hold itself out to perform service for any of the manufacturers or assemblers or dealers who offer vehicles to you?

A. Oh, yes, we do. We serve a great many shippers.

Q. And do you, in the course of your operations, transport General Motors vehicles?

A. Not from a General Motors plant nor for the account of General Motors, but we do serve a great many General [fol. 688] Motors dealers and distributors in secondary movement.

Q. Have you transported shipments which originated at the plant at Oakland?

A. Occasional movements of Chevrolets, yes.

Q. Is this traffic available there attractive to your company?

A. Well, anything in the way of an automobile is attractive regardless of who ships it.

Q. You serve the Ford Company substantially, do you not?

A. Substantially, yes.

Q. Have you, in your conduct of operations for the Ford Company in the eleven western states, found that they use both rail and truck service?

A. They do.

Q. You don't get it all?

A. No.

Q. Now, the applicant here, Mr. Weisler, proposes a contract carrier operation. Your service, you testified, is common carrier character; is that correct?

A. That is right, sir.

Q. Is there any objection of your company, other than its general objection to this application being granted at all, to its being granted as a contract carrier?

A. Well, we don't like to compete with any carrier when we don't know what his charges are.

Q. When a carrier operates as a common carrier, are [fol. 689] you able to find out what its published rates are?

A. Yes, we are.

Q. Do you publish a tariff covering all your operations?

A. Yes.

Q. Is it open to public inspection?

A. Yes, it is.

Q. Your company is a protestant in this proceeding, then, to the extent that you have authority to serve the Oakland plant; is that correct?

A. To the points in the—

Q. And to the extent that you have authority in secondary service which you could use to interline traffic originating at the southern California plants?

Mr. Johnson: I object to that as leading.

The Witness: Yes.

Mr. Johnson: All these questions have been leading.

Exam. Linn: I believe it has already been covered.

Mr. Handler: I have completed with the witness, and you may cross-examine.

OFFERS IN EVIDENCE

I will offer the exhibits in evidence.

Mr. Johnson: No objection.

Exam. Linn: Exhibits 114 through 120 inclusive are received in evidence.

(Protestant's Exhibits Nos. 114 through 120, Witness Weisler, were received in evidence.)

[fol. 690] Cross examination.

By Mr. Johnson:

Q. Mr. Weisler, you and Hadley both serve Ford, don't you?

A. That is correct.

Q. Hadley is a contract carrier.

A. So I understand.

Q. Have you opposed Hadley's application?

Mr. Jacobson: Which one?

Mr. Johnson: Any of them.

The Witness: I can't recall. I think maybe we have. If we had an opportunity, we would.

By Mr. Johnson:

Q. You don't like any contract carrier, including Hadley?

A. We generally protest any application for authority which in any way parallels any authority we have. At least we hope.

Q. You feel particularly strongly, though, about competition from a contract carrier like Hadley, don't you?

A. Shall I tell you exactly how I feel?

Q. About Hadley, yes.

Mr. Jacobson: Object to that as incompetent, irrelevant and immaterial.

Mr. Johnson: It seems to me that this witness is represented by able counsel who really doesn't need Mr. Jacobson's assistance.

Mr. Jacobson: I am still a party to the proceeding and [fol. 691] I can make an objection.

Exam. Linn: As I understand it, the Interstate Commerce Act contains some provisions which state contract carriers operate in a lawful manner. Perhaps the witness should seek another forum if he dislikes the contract carrier too much.

Mr. Johnson: I won't pursue my question.

By Mr. Johnson:

Q. Now, with respect to authority, you have no initial movement authority from South Gate or Raymer?

A. No, we don't.

Q. And your authority for initial movements from the Bay Area refers to Richmond and is limited to Idaho, Oregon and Washington on initial movements?

A. That's right, on initial movement.

Q. For how many years have you been serving Ford?

A. Oh, since, I would say, about 1930.

Q. And do your company and the Hadley company provide service from Milpitas, all of the truckaway service for Ford?

A. We are the only carriers that have initial authority from Milpitas that I know of.

Q. You are the only two carriers that Ford uses?

Mr. Handler: You mean motor carriers, counsel?

Mr. Johnson: Motor carriers.

The Witness: Motor carriers to my knowledge.

By Mr. Johnson:

Q. You haven't actually had any operations from Richmond itself, have you, since that plant was deactivated?

[fol. 692] A. Yes. I would also like to go back to the last question; and short hauls Ford out of Milpitas, and with respect to Richmond, we hauled automobiles out of Richmond for a period of approximately 24 months prior to the closing of that plant and the reopening of the Milpitas plant.

Q. How far is your yard at San Jose from Milpitas?

A. One and two tenths miles.

Q. Two tenths. How far—

Mr. Jacobson: One and two tenths.

The Witness: One and two tenths.

We load on the Ford property where Ford provides for us a 13 acre loading yard, and we have some facilities there, dispatch office shared jointly by Hadley and ourselves:

Q. Not by Insured?

A. Insured uses it.

Q. Insured uses, too?

A. They all use it.

Q. How far is your San Jose yard from Melrose?

A. Well, just—

Q. Roughly.

A. Roughly 30 miles. Melrose yard—no, a little less, maybe, than 30 miles.

Q. Now, you testified, as I recall, that you have been increasing your equipment in the last year or two years.

A. Yes.

[fol. 693] Q. Does that indicate expansion in the volume of your business?

A. Yes.

Q. I notice from your Exhibit 116 that you use leased equipment to a rather substantial extent. Is that correct?

A. We have full-time exclusive year to year leases on some tractors and three or four trailers, I imagine. They are exclusively tied up with us, painted our colors, the drivers are on our payroll the same as the drivers driving our own trucks.

Q. Do you work closely with the Ford Company with respect to scheduling of movement?

A. Yes.

Q. Do you receive advance information of a confidential character from it?

A. On what?

Q. On model changes.

A. Model changes? Sometimes we do. We get—sometimes we get some rather rough prints, and that's the extent of it. I have been at Detroit once in the last ten years to look at one.

Q. Now, on solicitation, you did not solicit the business at Raymer or South Gate, did you?

A. I have solicited business there, but not for a thorough haul-truck service. I have solicited business on a joint rail-truck set up.

Q. With respect to your operating rights from Richmond to the states involved, are you transporting Ford products to those states regularly?

[fol. 694] A. From Milpitas?

Q. Yes.

A. Yes, we do.

Q. Do you serve anyone else in initial movements of new automobiles, trucks and buses?

A. Well, we serve more than one Ford plant. We serve the Mercury plant at Los Angeles, and I think that's all the initial movement we have.

Q. What authority do you have to serve that plant? I mean with respect to destination territory.

A. From the authority it reads from the site of the Lincoln-Mercury plant of Ford Motor Company, Maywood, California, to points and places in Washington, Oregon, Idaho and Montana.

Q. Are you exercising those rights?

A. In a limited way.

Q. But you do actually receive shipments for movements to those states?

A. When our rates are competitive with rail, yes.

Q. Have you had shipments during the last year?

A. Yes.

Q. To various points in those states?

A. To some points in those states, yes.

Q. The determination as to when your service will be used, of course, is with the management of the Ford plant, there?

[fol. 695] A. Yes.

Q. Now, getting back to your movements from Richmond, there, I understand, you have a greater volume of movement to different points in the destination states.

A. Richmond isn't operated?

Q. I mean Milpitas. I beg your pardon.

A. Oh. Well, yes, we have a larger volume out of there than we do out of Los Angeles.

Q. Do you find that the Ford dealers like your truckaway service?

A. Some of them do; some of them don't.

Q. That must be rather discouraging.

A. It is discouraging, but—

Q. And what is the complaint about your service from the dealers who don't like it?

A. The dealers that don't like it, they claim that the car was so dirty they couldn't properly inspect it and there was a scratch and we refused the claim because they didn't take exception. Other dealers like it.

Q. Other dealers like it?

A. Most of them. I will say the larger percentage of them like it.

Q. When did you acquire the Milpitas authority?

A. I am afraid the date isn't shown here. I should have got a copy of the certificate. But I will say we acquired the authority approximately six to nine months, as a guess, [fol. 696] prior to actual operation.

Q. Of the Milpitas plant?

A. That was for the purpose of following the traffic from the old Richmond plant over to the new Milpitas plant?

A. That's what they call it, yes.

Mr. Johnson: That is all.

Redirect examination.

By Mr. Handler:

Q. Mr. Weisler, if General Motors at Oakland should assure you of any volume of traffic would you establish such terminal facilities at or near their plant as would be necessary to efficiently handle the traffic?

A. We would do exactly the same as we have done at the Milpitas plant and the Mercury plant in Los Angeles.

Q. Is that what you did?

A. That is what we did.

Q. Now, you were asked by Mr. Johnson on cross-examination if you hauled any other motor vehicles in initial traffic, and I think he used the term "automobiles, trucks and buses" which in the Commission's language, includes trailers. In your Sub 33 you do have initial authority on

trailers from Portland and St. Johns, Oregon. Do you exercise that authority?

A. Oh, yes, we do. When we have—that reminds me. We have initial movement out of Seattle. We actually do business on initial movement out of Seattle on truck.

Q. Those aren't for Ford, are they?
[fol. 697] A. No.

Q. And the ones out of Portland and St. Johns aren't for Ford?

A. No.

Q. So you do not restrict yourself to Ford traffic on initial haul?

A. No, we take it from anybody.

Mr. Handler: That is all.

I wish to thank Mr. Johnson for his complimentary comment. I will raise my fees accordingly.

Exam. Linn: You are excused, Mr. Weisler.

(Witness excused.)

COLLOQUY

Mr. Jacobson: Mr. Examiner, Mr. Boner, B & H Transportation; was here two days of the hearing and was unable to come back, and I would like to offer in evidence his rights and list of equipment. Unfortunately since Studebaker closed down he hasn't much of a showing of business, but he is ready, able and willing to transport vehicles.

Mr. Johnson: I have advised Mr. Jacobson I would be willing to stipulate that these exhibits may be admitted.

Exam. Linn: The one page document covering operating authority of B & H Truckaway is marked Exhibit No. 121, and the list of equipment is marked Exhibit 122 and, by stipulation of the parties are received in evidence as correctly showing what they purport to show.

(Protestant's Exhibits Nos. 121 and 122, Mr. Jacobson, were marked and received in evidence.)

[fol. 698] Exam. Linn: Is there any further evidence for protestants?

(No response.)

Exam. Linn: Does the applicant have anything further?

Mr. Johnson: Yes. I have three exhibits. The first exhibit is rural shipments by Southern Pacific Company to South Gate. May that be identified?

Exam. Linn: Exhibit No. 123 for identification.

Mr. Johnson: The second exhibit containing similar information from Raymer.

Exam. Linn: It will be marked Exhibit 124.

Mr. Johnson: The third gives similar information from Oakland.

Exam. Linn: 125.

(Applicant's Exhibits Nos. 123, 124 and 125, Mr. Johnson, were marked for identification.)

Mr. Johnson: I have discussed this with Mr. Cronon. This exhibit follows the pattern of his exhibits, and he has no objection to the introduction of these exhibits without my delaying this proceeding by calling a witness. I don't know whether that is satisfactory to Mr. Handler and Mr. Jacobson or not.

Mr. Jacobson: What is the source of the information contained in the documents, the records of the Southern Pacific or the records of the General Motors?

Mr. Johnson: South Gate is based on a waybill study [fol. 699] conducted by the Southern Pacific. The other two exhibits are based on movement figures supplied by General Motors and studies conducted by rate analysts.

Mr. Jacobson: Are the underlying documents available if we wanted to see them in connection with any of these?

Mr. Johnson: Yes.

Mr. Jacobson: May we reserve the right to look at them?

Mr. Johnson: Most certainly.

Exam. Linn: Is it stipulated the documents may be received without testimony as correctly showing what they purport to show?

Mr. Cronon: Yes.

Exam. Linn: The stipulations are received.

Exhibits 123, 124 and 125 for identification are received in evidence.

(Applicant's Exhibits 123, 124 and 125, Mr. Johnson, were received in evidence.)

Mr. Johnson: Now, that concludes the evidence applicant submitted in its own behalf.

However, I have been requested by counsel for some of the protesting parties to provide certain additional information for the record. Now, Messrs. Bieneman and Smith wanted for this record the location of other automobile assembly plants in California and the rail carrier or carriers which served those plants. I have that information [fol. 700] and am prepared to state it for the record. Of course, the General Motors plants that have been discussed in this proceeding are served by the Southern Pacific exclusively.

Going to the other plants, the Ford Motor Company has a plant at Milpitas which is served by the Western Pacific and Southern Pacific. The Richmond plant which was deactivated was served by the Santa Fe. The Ford Motor Company also has a plant at Long Beach which is served by the Union Pacific exclusively.

Of course I am talking about rail service in all of the statements.

The Ford Motor Company, Berkeley division, has a plant in Los Angeles which is served by the Los Angeles Junction Railroad Company, that company being owned by the Santa Fe. Chrysler Corporation has a plant at Los Angeles which is also served by the Los Angeles Junction.

Studebaker Packard Corporation has a plant at Los Angeles on the railroad lines of Los Angeles Junction. I also understand that the new plant of the Ford-Mercury Company is being created in Los Angeles which will be served exclusively by the Santa Fe. That takes care of that information.

In the course of the hearing we agreed to state the basis of the stock value shown on applicant's balance sheet exhibit. That basis is par value at \$50 per share.

The next request for information I had was from Mr. [fol. 701] Smith, as I recall it, and he wanted a breakdown of traffic handled by PMT in 1955 and the first six months of 1956 as between interstate and intrastate movements. We have made the study for the year 1955. Total movement by PMT from Melrose was 67,106 units, of which 61,728 moved intrastate. The balance of 5,378 moved interstate.

With respect to Raymer, the total movement by PMT in 1956 was 108,845, of which all but 722 units moved intra-state. The interstate movement was to the port of Los Angeles and to Calexico and San Ysidro.

I believe that discharges my commitments to provide information of this character.

Exam. Linn: Unless the parties present have some challenge of the matter stated by counsel, they will be treated as though competently established.

Mr. Handler: I think counsel erred in his statement as to Richmond. It isn't too material since it isn't operated. There is one more railroad at Richmond, I am advised.

Mr. Johnson: At Richmond?

Mr. Handler: Yes. The Southern Pacific and the Santa Fe.

Mr. Johnson: It is our understanding they were actually on the tracks of the Santa Fe.

Exam. Linn: Off the record.

(Discussion off the record.)

Exam. Linn: On the record.

[fol. 702] Mr. Johnson: I accept the correction with respect to the Richmond plant which was deactivated.

Mr. Handler: I believe we still have left, Mr. Examiner, the question as to a late filed exhibit with stipulation, if this is the appropriate time to raise that point.

Probably Mr. Johnson could more adequately state it than I could since he talked directly to counsel.

Mr. Johnson: I rather hate to make the statement for Mr. Bieneman. That is one reason why I suggested that you talk to him, so that you could represent him.

Exam. Linn: I wonder if we can go off the record.

(Discussion off the record.)

Exam. Linn: On the record.

Mr. Handler: Mr. Examiner, at this time I should like to request on behalf of certain counsel for protestants who are no longer in attendance at the hearing the right on their part to file late filed exhibits, accompanied by stipulations with Mr. Johnson, who represents the applicant, specifically on behalf of counsel Louis Smith for his client, that he be

permitted to file within two weeks from today the copies of the operating rights, equipment facilities and methods of operation which would be utilized by his client in performing service within the scope of the application.

Exam. Linn: Kenosha Auto Transport and Western Auto Transport?

Mr. Handler: I understand those are the two for whom he [fol. 703] entered an appearance.

Mr. Johnson: And the willingness of those carriers to provide the service.

Mr. Handler: Correct; either in initial movement where they may have such authority or interline service in secondary operations otherwise.

On behalf of Walter Bieneman, representing the National Automobile Transporters Association, that he be permitted to file a late filed exhibit, accompanied by stipulation with Mr. Johnson representing the applicant, two weeks from this date in Washington; an exhibit showing the existing railways from San Francisco and Los Angeles origin territory to representative points involved in this application; a copy of a petition for suspension filed by him on behalf of certain motor carriers to proposed railway deductions from California points to Arizona, and a copy of the reply submitted on behalf of the rail lines through agent Haines of South Pacific Coast Freight Bureau, and a statement of the position of the National Automobile Transporters Association.

Now, it is further my understanding that within one week approximately these documents, accompanied by a proposed stipulation will be submitted to Mr. Johnson, thereafter filed in Washington and properly executed, with Mr. Johnson reserving such objections to the introduction of any of these documents as he may feel appropriate. How- [fol. 704] ever, the documents will be submitted with such objection so that the full file will be before the Commission, and I assume that both counsel will submit copies of these exhibits and stipulations to all parties of record.

Mr. Johnson: That is a correct statement. I have agreed to enter into this stipulation as an accommodation to these counsel.

Exam. Linn: The exhibits specified may be filed after the close of the hearing to be due at the Commission's office on or prior to March 10, 1957.

Are there any further matters to require attention or any further evidence on behalf of either protestants or applicant?

Mr. Johnson: No.

Well, there is a question that has been discussed informally by counsel with respect to a brief. Applicant desires to submit a brief, and we suggest 60 days from this date.

Exam. Linn: Off the record.

(Discussion off the record.)

Exam. Linn: On the record.

The concurrent briefs in this matter will be due at the Commission's office on or about April 20, 1957.

If there is nothing further the hearing is now closed.

(Whereupon, at 4:03 p.m., the hearing in the above-entitled matter was closed.)